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CURRENT EVENTS.

THE SUPREME COURT OF THE UNITED STATES. — In our last two numbers we "supped full of horrors," with the Anarchist case and its tragical denouement, and now with joy and gladness we bid that unsavory subject a long farewell, and turn to "metal more attractive," springing from the bottom to the top, from the culprit upon the scaffold to the judge of high degree.

The supreme court is *the one* institution of our federal government in which the people of the United States, and especially the legal profession, may well feel the most unqualified pride. That august tribunal will, within a few years, round off its first century of usefulness; and from the day when it first assumed the functions of chief of the judicial branch of a doubtful, almost desperate experiment, founded upon the ruins of a most lamentable failure, the old confederation, up to this time, through all these years of storm and sunshine, it has, without variableness or shadow of turning, kept the faith and fully executed all the high trusts committed to its charge by the framers of the constitution. It has proved itself, as it was intended to be, the chief conservative element of the federal government, the great balance wheel, regulating the complex machinery, neutralizing all jars and oscillations and making all things even.

It has not escaped the trials which encompass all institutions of human government. It has more than once come into conflict with the executive and legislative department; it has been assailed by popular clamor and public obloquy, but has emerged serene and triumphant from every trial, its course approved by "sober second thought" of the people, and its reputation for wisdom and probity enchanced by the tests to which it has been subjected.

Within its first century the supreme court, as the head of the judicial department of the United States, has built up a system of jurisprudence at once unique, complete and admirable; in that system the rights of the States are strictly and carefully conserved, while full and proper scope is allowed for the exercise by the federal government of all the powers delegated to it by the constitution. In doing this it was necessary to preserve carefully a middle course; the *animus* of the old confederation survived its dissolution, and found expression in jealously of the federal government and unreasonable apprehensions of centralization and of unwarranted assumptions of power. On the other hand the memory of the weakness of the confederation engendered predilections for a strong government. The latter of these two lines of thought was formulated in doctrines which for half a century made the name "federalist" odious; the former crystalized first in the doctrine of nullification, then in that of secession, culminating in civil war. Through these opposing political forces, the supreme court held an unswerving middle course, and regardless alike of the frowns of power, and the clamor of the populace, has expounded the constitution and applied its principles, with a wisdom unequaled by that of the sages of any age or country. In its constitutional rulings the supreme court has built for itself a monument *ære perennius*, and we may well say of it, as Mr. Webster said of Massachusetts, the past, at least, is secure.

Our attention has been attracted to this subject by the perusal of two successive communications in the *New York Nation* on the subject of the *personnel* of the supreme court. The latter of these correspondents controverts the accuracy of some of the former's historical and biographical details, but we will not enter into the discussion of these points, *non nostrum tantus componere lites*, we only avail ourselves of the writer's collation of undisputed facts to say that all the work of the Supreme Court of the United States since its organization has been done by forty-nine justices and chief justices, a remarkably small number of men to have accomplished so great a work. We learn from the same authority that Maine furnished one justice, Mr. Clifford; New Hampshire one, Mr. Woodbury; Massachusetts four, Cushing, Story, Curtis and Gray; Connecticut one, Ellsworth; New York six, Gay, Livingston, Thompson, Nelson, Hunt and Blatchford;

New Jersey two, Patterson and Bradley; Pennsylvania four, Wilson, Baldwin, Greer and Strong; Maryland five, Taney, Johnson, Harrison, Chase and Duval; Virginia five, Marshall, Washington, Blair, Barbour and Daniel; North Carolina two, Iredell and Moore, South Carolina two, Johnson and Rutledge; Georgia two, Wayne and Woods; Alabama two, McKinley and Campbell; Tennessee one, Catron; Kentucky three, Todd, Trimble and Harlan; Ohio five, McLean, Chase, Waite, Swayne and Mathews; Illinois one, Davis; Iowa one, Miller, and California one, Field.

We cannot better conclude this article than by adopting the langauge of the *Nation's* correspondent:

"And what a comment, that for near a hundred years there had not been a poor lawyer, a weak or a bad man on that bench—never had been! The *personnel* of the court had always been so high, the court had so well performed its functions, so well borne its dignity and sustained itself, that conscious weakness, infirmity of character, deficiency of learning had never reached the bench—dared not seek it."

NOTES OF RECENT DECISIONS.

MANDAMUS—INTOXICATING LIQUORS—CARRIER.—We notice a recent decision[1] of the Supreme Court of Iowa which is remarkable chiefly as furnishing an indication of a new direction taken by the current of litigation or on the subject of intoxicating liquors. The facts were that the plaintiff's company prepared a fluid which they, rather injudiciously, denominated "New Era beer," but which they averred was not intoxicating, and desired the defendant corporation, a common carrier, to transport a quantity of it into the State of Iowa. This the defendant, apprehending that the article might be regarded in Iowa as contraband, declined to do, and plaintiff applied for a writ of *mandamus* to compel the defendant to perform its duty as a common carrier. The application was unsuccessful, the court holding in effect that as the plaintiff's company called its fluid "New Era beer," the presumption was that it really was beer, and being beer, that it would be intoxicating in Iowa, howsoever it might be elsewhere, because the statute law of Iowa declared that beer was an intoxicating liquor. The court therefore held that defendant company had no reason to know or believe that the "New Era beer" differed in any material respect from any other kind of beer, except the assertion of the plaintiff company, and it had a perfect right to form and act upon its own opinion on the subject. The defendant company could not be compelled to transport the "New Era beer" into the State of Iowa, if it had reason to believe that in so doing it would violate the laws of that State On this subject the court says: "The words 'New Era,' added to the words 'beer,' indicated nothing as to the character of the product. Suppose the plaintiff had tendered to the defendant, for transportation, any article denominated simply 'brandy;' would the the plaintiff be entitled to maintain its action for *mandamus* to compel the defendant to receive the article, upon an allegation that it was a new kind of brandy which had no intoxicating quality? We think not. The defendant would discover by the name that the article is apparently prohibited, and could not determine otherwise without resorting to chemical analysis, or some other kind of evidence. The determination would call for the exercise of a discretion as to what evidence should be resorted to, and what should be deemed satisfactory. Where an act is to be performed or omitted in the discretion of a party, the performance cannot be enforced by an order of *mandamus*. In High, Extr. Rem. the author says: 'Stated in general terms, the principle is that *mandamus* will lie to compel the performance of duties purely ministerial in their nature, and so clear and specific that no element of discretion is left in their performance, but that, as to all acts or duties, necessary calling for the exercise of judgment or discretion, upon the part of the officer or body, at whose hands their performance is required, *mandamus* will not lie. As illustrating the application of the rule, see U. S. v. Seaman, 17 How. 230; Hall v. Stewart, 23 Kan. 396; State v. Railway Co., 33 Kan. 176, 5 Pac. Rep. 772; Howland v. Eldredge, 43 N. Y. 457. The fact, then that the product in

[1] Milwaukee Malt Extract Co. v. Chicago, etc. Co., S. C. Iowa, Oct. 24, 1887; 34 N. W. Rep. 761.

question is not intoxicating, does not, in our opinion, give a right to this action. From the name of the product the defendant had a right to infer that the transportation was prohibited, and we think it was not bound at its peril to correctly analyze the product, or determine otherwise that it was not in fact intoxicating. We think that the demurrer was properly sustained."

SISTER STATE CORPORATIONS.

1. *Definition and General Description.*—The term sister State corporation, as used in this article, means a corporation created by one State of the Union considered with reference to another State of the Union. For example, a Massachusetts corporation is a sister State corporation as to Illinois. The position of such a corporation, except as modified by local State statutes, is similar in most respects to that of a foreign corporation proper, one chartered by a foreign sovereignty, as England or France. Congress, in the exercise of its powers under the federal constitution, for example in the exercise of its power to regulate interstate and foreign commerce, may at any time make the position of a sister State corporation and of a foreign corporation essentially different, but as yet it has not done so. A sister State corporation is to be distinguished from a national corporation, that is, from a corporation which is chartered by congress, and which holds one or more federal franchises, such as the right to sue and be sued in the federal courts irrespective of the citizenship of the parties, or the right to be exempt from general taxationas a federal agency.[1]

A corporation chartered by two or more States cannot be a sister State corporation in either as to it. It is a domestic corporation in each.[2] This implies a separate corporate organization in the eye of the law in each State. Such is the doctrine of the United States Supreme Court, and it seems to be the only rule which might not produce a dead-lock in the affairs of the corporation. If to-day a number of persons holding a charter to be a corporation from each of two States, legally have only one organization and manage their property in both States as a unit, yet to-morrow each of the two States, if they have reserved the usual power to amend their grants of corporate franchises, may destroy the unity of corporate organization by enacting inconsistent provisions, as that all the directors shall be residents of each State. A grant of a license by a State to a sister State corporation to act within its limits, not amounting to re-incorporation, does not make such corporation a domestic corporation of the licensing State nor deprive it of its attributes there as a sister State corporation.[3] In determining whether or not a sister State association is to be deemed a corporation, regard is to be had to its essential attributes rather than to the name by which it is known. If the essential franchises of a corporation are conferred by a sister State on a joint stock company it is to be deemed a corporation, although in the statutes of that State it is called an "un incorporated association."[4]

2. *Power of State over Sister State Corporations—Limitations Thereon.*—A State may in general exclude a sister State corporation from its territory or may impose conditions upon its acting within such territory.[5] This is the general rule. So a State may discriminate between its own corporations and those of other States desirous of transacting business within its jurisdiction.[6] A State may require a sister State corporation to pay taxes as a condition precedent to acquiring

[1] See article, 21 Am. Law Review, 258.

[2] Railroad Commission Cases, 116 U. S. 307; Memphis, etc. R. Co. v. Alabama, 107 U. S. 581; Railroad Co. v. Vance, 96 U. S. 450; Muller v. Dows, 94 U. S. 444; Railroad Co. v. Whitton, 13 Wall. 270; Ohio, etc. R. Co. v. Wheeler, 1 Blackf. 286. Some remarks in Railroad Co. v. Harris, 12 Wall. 65, seem inconsistent with the text, but are silently limited by later cases.

[3] Penn. Co. v. St. L., etc. R. Co., 118 U. S. 290; Railroad Co. v. Koontz, 104 U. S. 5; Goodlet v. Louisville, etc. R. Co., 7 S C. Rep. 1254 (May 27, 1887).

[4] Fargo v. Louisville, etc. R. Co., 7 Fed. Rep. 787; Liverpool Ins. Co. v. Massachusetts, 10 Wall. 566; Maltz v. American Express Co., 3 Cent. L. J. 784 (U. S. C. C., E. Dist of Mich.) *Contra:* Dinsmore v. Phil., etc. R. Co., 3 Cent. L. J. 157 (U. S. C. C., E. Dist. of Penn.)

[5] Phila. Fire Assn. v. New York, 119 U. S. 110; Cooper Mfg. Co. v. Ferguson, 113 U. S. 727; Doyle v. Continental Ins. Co., 94 U. S. 535; Ducat v. Chicago, 10 Wall. 410; Paul v. Virginia, 8 Wall. 168; Lafayette Ins. Co. v. French, 18 How. 407; Bank of Augusta v. Earle, 13 Pet. 588.

[6] Paul v. Virginia, 8 Wall. 168; Ducat v. Chicago, 10 Wall. 410; Liverpool Ins. Co. v. Massachusetts, 10 Wall. 410.

the right of acting within the State.[7] As a State has the power to exclude a sister State corporation it may change the terms of admission at any time, *e. g.*, may impose an additional tax as a condition of remaining.[8] A State may discriminate in its taxation between sister State corporations of the same class, taxing a corporation of one State higher than a corporation of another State.[9]

The limitations upon the power of a State over sister State corporations arise either from lack of physical power or from restrictions contained in the federal constitution and laws. The power of a State legislature is also limited by the constitutional provisions of its own State. A rule arising from the first class of limitations is, that a State cannot revoke corporate franchises granted by a sister State.[10]

A State can impose no conditions on the action of a sister State corporation which are repugnant to the federal constitution.[11] So a State cannot by its own legislation deprive a sister State corporation of its right under the federal constitution and statutes to remove a suit to the federal courts.[12] A State cannot revoke the right of a sister State corporation to act within the State and exclude it from the State for breach of its contract not to remove a suit into a federal court, where by the laws of the United States it has such right. It was recently held, that a State statute which required sister State railway corporations, as a condition precedent to obtaining a permit to do business in the State, to stipulate that they would not remove suits against them into the federal courts was void, as it makes the right to a license depend upon the surrender of a right secured by the federal constitution and statutes. The stipulation is also void.[13]

Granting a license to act with the State to a sister State corporation does not constitute a contract under the obligation of contract clause of the federal constitution, so as to prohibit subsequent taxation by the State.[14]

Article 4, section 2 of the federal constitution, which provides that a citizen of a State shall have the same rights in a sister State as a domestic citizen, imposes no restriction upon State control of sister State corporations, as it is construed to apply only to natural persons, not to corporations.[15]

It has been held by a State court, that a sister State corporation owning a patent is not, as to the manufacture and sale of the article patented, subject to a State law relating to foreign corporations requiring them, among other things, to designate in each county where they act an agent on whom process may be served, *i. e.*, it was held that the corporation might enforce payment for the patented article without complying with the State statute.[16] These decisions are based on the supposition that the control of patents by congress under the federal constitution is infringed by such State statute.

Amendment V to the federal constitution, which provides that no person shall be deprived of property without due process of law, as it is construed to be a restriction on the federal government only, not upon the States,[17] does not affect the power of a State over a sister State corporation.

Amendment XIV to the federal constitution, which provides that no State shall deprive "any person" of property without due process of law, nor deny to "any person" within its jurisdiction the equal protection of the laws, is held to apply to national corporations and to State corporations as against the State creating them.[18] How far this amendment limits

[7] Lafayette Ins. Co. v. French, 18 How. 407; Paul v. Virginia, 8 Wall. 168; Ducat v. Chicago, 10 Wall. 410.

[8] Phila. Fire Assn. v. New York, 119 U. S. 110; Passenger Cases, 7 How. 349.

[9] *Id.*

[10] Merrick v. Van Santvoord, 34 N. Y. 208; Society, etc. v. New Haven, 8 Wheat. 483.

[11] Phila. Fire Assn. v. New York, 219 U. S. 110; St. Clair v. Cox, 106 U. S. 350; Doyle v. Continental Ins. Co., 94 U. S. 535. And see cases cited in support of particular rules, *infra*.

[12] Insurance Co. v. Morse, 20 Wall. 445.

[13] Barron v. Burnside, 121 U. S. 186, limiting Doyle v. Continental Ins. Co., 94 U. S. 535, and re-establishing the doctrine followed in Ins. Co. v. Morse, *supra*.

[14] Home Ins. Co. v. City Council of Augusta, 93 U. S. 116.

[15] Pensacola Tel. Co. v. W. U. Tel. Co., 96 U. S. 1; Ducat v. Chicago, 10 Wall. 410.

[16] Grover, etc. v. Butler, 53 Ind. 454; Walter A. Wood Mowing Machine Co. v. Caldwell, 54 Ind. 270.

[17] Barron v. Baltimore, 7 Pet. 243; Fox v. Ohio, 5 How. 434; Withers v. Buckley, 20 How. 84; Twitchell v. Commonwealth, 7 Wall. 321.

[18] Santa Clara County v. Southern Pac. R. Co., 118 U. S. 394. *Accord:* Railroad Tax Cases, 13 Fed. Rep. 722; Railroad Tax Cases, 18 Fed. Rep. 385; San Mateo Co. v. Southern Pac. R. Co., 8 Sawyer, 238; People v. Fire Assn., 92 N. Y. 311. *Contra:* Central Pac. R. Co. v. State Board of Equalization, 60 Cal. 35; Ins. Co. v. New Orleans, 1 Woods, 85.

the power of a State over a sister State corporation is doubtful. The United States Supreme Court has recently held, that a State statute imposing on a sister State corporation doing business in the State an additional tax and discriminating in taxation between sister State corporations of the same class, namely, insurance corporations, does not violate this amendment.[19] The court say, as a State may exclude entirely, it may regulate.

Among the limitations on the powers of the States, which spring from the federal constitution, is one which is founded upon the whole instrument rather than upon any specific part of it, and which is not as yet clearly defined, namely, the exemption of federal agencies from State control. Where a State corporation is an agent of the federal government no State can probably impose restrictions upon it impairing its efficiency as such agent. A State telegraph corporation, which accepts the offer contained in the federal statutes on the subject of telegraphs, is an agent of the federal government for the purpose of carrying government messages.[20] A corporation, which is a federal agency, may be taxed by a State in those cases in which its efficiency as a government agency is not impaired.[21] From this rule the subsidiary rule has been deduced, that a State may tax the property but not the operations of federal agents.[22]

3. *Limitation of Power of State by Commerce Clause of Federal Constitution.*—The most important limitation on the power of a State over sister State corporations is found in article 1, section 8 of the federal constitution, which makes inter-state commerce subject to regulation by congress. It does not fall within the scope of this article, even if it were practicable, to state all the judicial decisions under this clause, but a few of the later and more important decisions bearing upon our subject will be noticed. Inter-state commerce, conducted by a corporation for example, is entitled to the same protection against State exactions as is given to individuals.[23] Interstate communication by telegraph is commerce subject to exclusive regulation by congress.[24] A State tax on each message carried out of a State by a sister State telegraph company, which has accepted the offer contained in the federal legislation on telegraphs, is void as an interference with inter-state commerce, and as to messages carried between any two points for the federal government a State tax thereon is void as an unlawful interference with a government agency.[25] A State statute which prescribes the order in which telegraphic messages shall be sent and requires delivery by messenger, in certain cases is invalid as to dispatches to be delivered in other States as interference with interstate commerce.[26] Carriage of passengers or goods from a point in one State to a point in another State, or carriage across a State, is interstate commerce within the exclusive control of congress, even as to the part of the carriage within the State.[27] So a State prohibition of discrimination in charges for such carriage is void;[28] so a State tax per car on the cars of a sister State sleeping car corporation engaged in such carriage and having its cars hauled over railways owned and operated by others is void;[29] so a tax on inter-state freight by weight is void;[30] so is a State tax on the capital stock of a sister State corporation engaged in inter-state commerce and owning in the State only a leasehold of a ferry landing slip.[31] But property within the jurisdiction of the State, owned by a person or corporation engaged in inter-state commerce, is subject to State taxation, *e. g.*, logs, although

[19] Phila. Fire Assn. v. New York, 119 U. S. 110.

[20] Telegraph Co. v. Texas, 105 U. S. 460. *Accord:* Pensacola Tel. Co. v. W. U. Tel. Co., 96 U. S. 1.

[21] Railroad Co. v. Peniston, 18 Wall. 5. *Accord:* Tel. Co. v. Texas, *supra;* National Bank v. Commonwealth, 9 Wall. 353; Thompson v. Pac. R. Co., 9 Wall. 579.

[22] Railroad Co. v. Peniston, *supra.*

[23] Gloucester Ferry Co. v. Penn., 114 U. S. 196; Pensacola Tel. Co. v. W. U. Tel. Co., 96 U. S. 1; Welton v. Missouri, 91 U. S. 275; Mobile v. Kimball, 102 U. S. 691. *Accord:* Paul v. Virginia, 8 Wall. 168.

[24] Telegraph Co. v. Texas, 105 U. S. 466; Pensacola Tel. Co. v. W. U. Tel. Co., 96 U. S. 1; Wabash, etc. R. Co. v. Illinois, 118 U. S. 557.

[25] Telegraph Co. v. Texas, 105 U. S. 460.

[26] Western Union Tel. Co. v. Pendleton, 122 U. S. 347.

[27] Wabash, etc. R. Co. v. Illinois, 118 U. S. 577; State Freight Tax Case, 15 Wall. 232; Fargo v. Michigan, 121 U. S. 230; Gloucester Ferry Co. v. Penn, 114 U. S. 196.

[28] Wabash, etc. R. Co. v. Illinois, 118 U. S. 557.

[29] Pickard v. Pullman, etc. Co., 117 U. S. 34. *Accord:* Tennessee v. Pullman, etc. Co., 117 U. S. 51.

[30] State Freight Tax Case, 15 Wall. 232.

[31] Gloucester Ferry Co. v. Penn, 114 U. S. 196, overruling Commonwealth v. Gloucester Ferry Co., 98 Pa. St. 105.

partly prepared for exportation.[32] Offering for sale or selling goods by sample by citizens of one State in sister State is inter-state commerce, and a State statute imposing a tax on such conduct is void.[33] The rule would be different as to a tax on goods present in the taxing State.[34] So a State tax on parties taking orders for importation of goods into a State discriminating against those not having their principal place of business in the State is void.[35] A State tax on importers is void.[36]

The business of underwriter or insurer is not commerce within the commerce clause of the federal constitution.[37]

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[32] *Id.* *Accord:* Coe v. Errol, 116 U. S. 517.
[33] Robbins v. Shelby County Taxing District, 120 U. S. 489. *Accord:* Carson v. Maryland, 120 U. S. 592.
[34] *Id.*
[35] Walling v. Michigan, 116 U. S. 446.
[36] Brown v. Maryland, 12 Wheat. 419.
[37] Paul v. Virginia, 8 Wall. 168; Liverpool, etc. Ins. Co. v. Oliver, 10 Wall. 566; Ducat v. Chicago, 10 Wall. 410.

PERSONS AGGRIEVED.

The words "persons aggrieved" so often occur in statutes, especially those which contain penalties and rights of appeal, that though they are not, strictly speaking, legal technical words, yet they require to be interpreted with reference to the subject-matter, and in that respect much legal acuteness has been expended upon them. They occur in so many statutes of widely different application that it would be difficult to collect the authorities, but it may suffice to refer to a few of the most recent. All the authorities have a certain affinity, so far as some right is conferred on a person aggrieved and upon no others. Several sections, for example, in the Summary Jurisdiction Acts contain regulation for the procedure when a person aggrieved thinks of proscuting his appeal, and those two words are used to limit the class of persons who are in a position to resort to a higher court.

In the Licensing Acts other examples also occur. By the Intoxicating Liquor Act, 1828, any person who thinks himself aggrieved by an act of any justice done in reference to many licensing matters may appeal to quarter sessions. In one case the justice had granted new license which had been very zealously opposed by a publican who had premises very near the new licensed house, but who failed to intercept the annoyance of a rival prospering under his very eyes, and he appealed to quarter session.[1] But the court properly declined to hear him, on the ground that his grievance was no greater than that of every other member of the public; at all events, no legal right of his was interfered with, any more than the right of all tradesmen who are annoyed by finding a rival opening a new shop very near their own old established house. Another very recent case under the same section was that of Garratt v Middlesex JJ.,[2] where the occupier of a beer-house had assigned all his interest to mortgagees, and had given them express authority to do all acts as his attorney with reference to a transfer of the license. He had applied for a renewal of the license, but having no longer any particular interest, stated that he did not wish a renewal for himself, whereupon the mortgagees applied in his name for the renewal and it was refused. They then appealed to quarter sessions, when the objection was taken that they were not the persons aggrieved, and, therefore, had no *locus standi*, for the license had not hitherto been in their name, and they were strangers. The court of quarter session refused to give effect to the appeal, but the Queen's Bench Division held that they were wrong, and that the mortgagees had a sufficient legal interest to justify them in maintaining the appeal. This decision, however, was not an authority, for what is sometimes attempted, namely, for a landlord whose licensed tenant has been convicted, to appeal in his own name against the conviction of the tenant. In R. v Andover JJ.,[3] the court had occasion to decide that point, and held that the interest of a landlord was not sufficient to enable the latter to appeal to quarter sessions, against the tenant's conviction.

The recent case of Robinson & Currey,[4]

[1] R. v. Middlesex, JJ., 3 B. & Ad. 938.
[2] 12 Q. B. D. 620.
[3] 16 Q. B. D. 711.
[4] L. R. 7 Q. B. 465.

involved a useful review of many cases, especially those bearing on the vocation of a common informer. The action was brought by an officer of one of the company of Goldsmiths mentioned in 7 & 8 Vict. ch. 22, to recover penalties for selling wares of silver with a counterfeit imitation of the make used by the company. The point which came to be raised and argued was whether the company were the parties grieved. Certain penalties were imposed, and the statute said that the same may be sued for and recovered by any of the several companies of Goldsmiths, of which the plaintiff's company was one. The act 3 & 4 Will, 4, ch. 42, §. 3, declared that action for penalties to the party grieved must be brought within two years after the cause of action. Bramwell, L. J., said that the expression "party grieved" was not a technical; that the words were ordinary English words, and ought to have the ordinary meaning put on them. A party grieved was not brought into existence by the statute which gave him the penalty, he was a person who was supposed to exist and the statute was passed off on account of his grievance. None of the companies, however, could have maintained any action against the defendant, and therefore they could not be said to be grieved. The company merely sued for the penalty in pursuance of a public duty and as a kind of public prosecutor, upon the same principle upon which he might prosecute an indictment at law, if an indictment would lie where a thing is prohibited and no penalty is fixed. Lush, L. J., said that parties grieved must mean parties who have sustained some damage by reason of the act done for which the penalty was fixed. The party must be one who already had a cause of action as soon as the act had been committed. In that case as no legal injury has been sustained, the statute which limits the action to two years was held not to apply.

Some useful decisions of the court as to the meaning of the same words occurred under the bankruptcy acts, and will show the principle on which the interpretation proceeds. The administration of a bankrupt's estate is well known to be for the benefit of the creditors alone, and though the court controls the management, and its officers have certain duties to perform, yet, the funds realized are not deemed to be realized for the benefit of the court or its officers, and the trustee in bankruptcy is the representative of the creditors. According to the bankruptcy rules a receiver or manager of the estate is first appointed, and when the trustee is chosen by the creditors, the receiver is to hand over all the money and property in his hands. The receiver is to be allowed a sum for his services such as the court, the trustee and the committee of inspection, if any, think fit. But the receiver is expressly stated to have no lien whatever, for his remuneration on any money or property which may have come to his hands. In *Ex parte Browne*,[5] a publican had been made a bankrupt, and Browne had been appointed a receiver of the debtor's property, and he also managed the public-house business for two months, till the creditors appointed a trustee named Carr. Browne's charges as receiver were taxed by the officer of the court at 60*l*. He made various applications to Carr for this sum and ultimately applied to the court for an order directing Carr to pay him the amount. He alleged that Carr had dealt improvidently with the assets, and wasted them in carrying on the business at a loss. The answer of Carr was, that there was only a small sum of 122*l*. of assets, and the claims of solicitor and auctioneer and receiver were about 350*l*. The statute said that any creditor, debtor, or other person aggrieved by any act of the trustee may apply to the court; and Browne the receiver, applied to have his charges paid. But the register in bankruptcy and the court of appeal held that Browne could not be heard to complain. As Cotton, L. J., said, a receiver has no charge on the assets for his remuneration; his right is only to be paid out of the net proceeds of the estate. And in order to ascertain what those proceeds are, the estate must first be administered for the benefit, not of the receiver, but of the creditors. If the trustee has acted improperly in the administration, the receiver is not the person to question what he has done; the creditors are the proper persons to do that. It would not be right to allow the receiver, who has no lien upon the assets, to come and question the con-

[5] 16 Ch. D. 497.

duct of the trustee in the administration when the creditors do not complain of it.

Again, in another case of *Ex parte* Lister,[6] on the same section a question arose as to whether a petitioning creditor of the bankrupt was aggrieved. By the 85th section of the act 32 & 33 Vict. ch. 71, the bankruptcy court, on the application of the trustee, may order that, for a certain time, not exceeding three months, post letters addressed to the bankrupt shall be redirected, sent or delivered by the postmaster general to the trustee. An adjudication of bankruptcy had been made against two merchants who had departed out of England with intent to defeat or delay their creditors. A receiver had been appointed. The court ordered that all post letters addressed to the bankrupt should be redirected to the receiver. The petitioning creditor and the receiver thought that this order ought to have been applied to all letters addressed to the bankrupts under another name they had used as traders. The section of the act said that such an order may be made on the application of the trustee, but no other person. The court therefore decided that as the trustee had not applied no other person could apply, and the application was refused.

Similar questions as to persons aggieved often arise under the Trade-marks Act, 1875 (38 & 39 Vict. ch. 91). By the 5th section, if the name of any person who is not, for the time being, entitled to the exclusive use of a trade-mark is entered on the register of trade-marks as a proprietor of such trade-mark, or if the registrar refuses to enter on the register as proprietor the name of any person who is, for the time being, entitled to the exclusive use of such trade-mark, or if any mark is registered as a trade-mark which is not anthorized to be so registered, any person aggrieved may apply in the prescribed manner for an order of the court that the register may be rectified. In the case of *Re* Ralph,[7] Messrs. Taylor and Wilson applied to the court to remove the trade-mark of the "Home Washer" from the register of trade-marks. In 1868, Ralph became the purchaser of a patent for a washing machine, called the "Home Washer," which was taken out in 1868, and expired in 1882. Ralph never manufactured the machines himself, but licensed some manufacturers in Scotland to make them, and they paid to him a royalty for the same up to 1877. In May, 1877, Ralph gave an exclusive license to Taylor and Wilson to manufacture these machines on their paying to him a royalty of 6*s*. 8*d*. upon each machine. The trade-mark of the "Home Washer" was registered by Ralph in 1876 as applied to these machines. The patent expired in 1882, since which time Ralph had not himself or by any agent manufactured a single machine. On the part of the applicants, Taylor and Wilson, it was contended that the name of "Home Washer" ought never to have been registered at all, as it was a mere descriptive word, and as in the case of "linoleum," the former patantee had no right after the patent expired to claim the exclusive use of the name by which the former patent went. It was also contended that the applicants were "persons aggrieved," and so came within the statute, and the rule framed under the statute, which allowed any person aggrieved to apply for the removal of a trade-mark. The judge, Pearson, J., took a view favorable to the application. He said he could hardly conceive any person who could be described as aggrieved if these applicants were not aggrieved. They had been making the machine ever since the patent expired, and had been the exclusive makers since 1877. The judge also held that, after the patent expired, the patentee had no further right to the exclusive use of the name as a trade-mark. Hence, the name was removed from the register.

Another more difficult case on the words "persons aggrieved" occurred in *Re* Riviere.[8] McDowell & Company applied to rectify the register of trade-marks by striking out the name of Riviere as owners of a trade-mark for brandy. The applicants had, as brandy merchants, at Madras, used a red Maltese cross as the distinctive mark of the brandy they sold, They used to get their brandy from Riviere, and asked Riviere to register it in England, which he did in his own name. But they soon ceased to get brandy from Riviere, who applied for an injuction to restrain them from using the trade-mark. It

[6] 17 Ch. D. 518.
[7] 25 Ch. D. 194.
[8] 26 Ch. D. 48.

came to be a contest whether McDowell & Company were entitled to the trade-mark, and one objection raised was that as they were merchants abroad and not carrying on business in England they were not aggrieved, and Pearson, J., refused their application. But the court of appeal reversed this on the ground that they may be aggrieved by the trade-mark being registered here in the name of another person. Lord Seborne L. C., said that though the words, "persons aggrieved" implied that there is a legal grievance, and that the thing complained of tended to his injury or damage in the legal sense of the word, yet it was not necessary that he should show his own title to the trade-mark. It might well be that nobody was entitled and yet, that the use of the trade-mark by another was injurious to him. The judgment in that case sustained the applicant's right to complain as a person aggrieved.

The variety of circumstances shown in the above cases make it clear that considerable nicety is required in determining who is a person aggrieved, and that usually some injury to a legal right must be shown, though that rule is not inflexible.—*Justice of the Peace, England.*

CONTRACT—SUBMISSION TO ENGINEER—INVALIDITY OF CLAUSE AGAINST APPEAL—EXPERT EVIDENCE—REVERSAL OF JUDGMENT—WITNESS—OPINION.

LOUISVILLE, ETC. R. CO. V. DONNEGAN.

Supreme Court of Indiana, May 26, 1887.

1. Parties cannot oust courts of their jurisdiction by stipulations in their contracts to submit their differences to the final decision of third persons.

2. Where a railroad company agreed with a contractor that the estimates should be left to the decision of the engineer "without recourse or appeal," such agreement will not be held to be final as between the parties, *even in the absence of fraud or mistake.*

3. Where there is evidence tending to sustain the verdict a judgment will not be reversed on the weight of the evidence.

4. Parties asking for a reversal of a judgment must furnish references to such portions of the record as will show that errors intervened in the court below.

5. An expert is a person having peculiar knowledge or skill in reference to the subject-matter of inquiry.

6. Non-expert witnesses must, so far as is possible, state the facts upon which they base their opinion; but in matters in which he is especially acquainted and which cannot be specifically described they may state their opinions.

7. In the absence of specific facts it must be presumed that the decisions and rulings of inferior courts were justly made.

ZOLLARS, C. J., delivered the opinion of the court:

In April, 1881, appellees, as partners, entered into a written contract with the railway company for the construction of a certain section of its road in the State of Illinois. It was therein agreed that the work should be completed on or before the first day of August, 1881. It was expressly stipulated that time should be of the essence of the contract. Appellees undertook to do all the grading, masonry, and all such other work as might be necessary to construct the stipulated section of the road, in accordance with the specifications, made a part of the contract, as they might be applicable, and agreeably to the directions of the engineer in charge of the work, given from time to time during the progress of the work. The work was to be paid for by the company, upon monthly and final estimates made by its engineers, and it was expressly stipulated that the estimates thus made by the engineer in charge of the work should be conclusive, as against appellees, "without further recourse or appeal." The chief engineer might review those estimates, and, if he did so, his estimates were to be substituted for the estimates reviewed. For extra work the company was to pay the cost and ten per cent. additional. The extra work was to be estimated by the company's engineer, and these estimates were also to be final and conclusive as against appellees. Appellees were to employ such a force of workmen as the engineer might deem adequate to the completion of the work within the time fixed. If they did not employ such a force as the engineer might thus deem adequate, he might employ such number of workmen as in his judgment would be necessary, and at such wages as he might find necessary and expedient, pay all such persons, and charge appellees with the amount as so much money paid to them upon the contract. Power was also given to the company's chief engineer to annul the contract, upon a written notice to appellee, if, in his judgment, the work was not prosecuted by them in a proper manner, and with sufficient speed. It was also stipulated that upon thirty days' notice to appellees the company might at any time, without cause, annul the contract; in which event they should be entitled to pay for work done up to that time. The right was reserved to the company's chief engineer to order, in writing, any modification or alteration to be made in the specifications, profiles, and plans, and in like manner to direct and order the omission of any portion of the work mentioned in the specifications, or to substitute any other work for such portions. If he should determine upon earthworks, bridges, culverts, walls, or other work in

addition to that embraced in the contract, appellees were bound to do such work for the prices agreed upon for like work, and upon the same terms and conditions, except with regard to the time of completing the work, which might be reasonably extended, at the discretion of the chief engineer.

The first paragraph of appellees' complaint was based upon that contract, and its violation by appellant. It is alleged herein that appellees began the work at once, furnished material, and continued to construct the road under the contract, until in August, 1881, when the railway company, without right and against their will, took charge of the work, and prosecuted the same to completion; that they, without fault on their part, were prevented from completing the section of road specified in the contract within the prescribed time, because of the company failing to procure the right of way, because of extra work ordered by the engineer, because of the engineer failing to furnish the height, centers, and specifications of bridges and culverts, because of changes in the work ordered by the engineer, and because of the incompetency of the engineer; that, after the work was taken out of their hands, the company prosecuted the same at a reckless and exorbitant cost, far in excess of what was required or necessary; that, subsequent to the written agreement, the amount to be paid by the company per cubic yard for earth was fixed by a parol agreement; that in the final estimate the amount returned by the engineer as due to appellees for earth-work done by them was too small, giving the figures; that the engineer ordered and directed that the piling for bridges should be of a certain length; that, being ignorant as to the proper length required, they obeyed, and under the contract were compelled to obey, the instructions of the engineer; that after the piling was furnished the engineer ordered them to be shortened, and in the final estimate allowed appellees only for the amount of lineal feet actually used, and neglected and refused to allow them for the amount so cut off; that an excessive, unwarranted, and fraudulent amount was charged against appellees by the engineer for placing bridge and culvert timbers, furnished by them before their discharge from the work, which amount the engineer in his final estimate deducted from the amount due to them; that subsequent to the written agreement it was orally agreed between the parties that appellees should be allowed two dollars per thousand feet extra on a large amount of bridge and culvert timbers, because the same was purchased by them at an extra cost, at the request of the company through its proper officers; that, in the final estimate by the engineer, said extra amount so agreed upon was not allowed to appellees; that the company ordered the appellees to remove their pile-driver some six miles beyond the section, to do extra work, and agreed to pay for such removal and extra work, and that the amount agreed upon was not returned by the engineer in his final estimate; that by the failure of the company to procure right of way, and the failure of the engineer upon the request of the appellees to furnish heights and centers, and to lay out the work, their men were left idle, to their damage in a large sum, giving the amount; that in the final estimate the engineer did not return the full amount due to appellees for iron furnished by them. It is averred that the engineers in charge of the work, whose orders appellees were bound to obey, and who made the monthly and final estimate, were incompetent and unfit for the duties assigned them; that appellees were not allowed to inspect either the monthly or final estimates; and that, acting in collusion with the company, the engineer, at the time knowing that their estimate was too low, and false and fraudulent, made them do as they did for the purpose of cheating and defrauding appellees.

Another written contract, similar in all essentials to the above-mentioned, except as it had reference to other sections of the road, was entered into by the parties at about the same time for the construction of another section of the railroad in the State of Illinois; that contract provided that the work should be completed on or before the first day of August, 1881. The second paragraph of appellee's complaint was based upon that contract, and its violation by appellant. The wrongs charged upon appellant in that paragraph are of the same nature as those charged in the first paragraph, and were charged in substantially the same way.

In June, 1881, a third written contract was entered into between the parties for the construction of certain sections of road in the State of Indiana. That contract, again, was similar in essentials to the others, except as it had reference to other sections of the road. The third paragraph of appellee's complaint was based upon that contract, and violation of it by appellant. And here, again, the wrongs charged by appellant are of the same nature, with the exception of some additional charges as to stone, etc., as those charged in the first paragraph of the complaint, and were charged in substantially the same way.

The fourth paragraph of the complaint is based upon the three contracts above mentioned, and alleges that they all related to the work upon the same road, and in fact constituted but one contract, and were so treated by the parties; that payments were made upon all three indiscriminately; that the accounts were so kept by the railway company and the appellees that amounts due to them upon and under any one of the separate contracts could not be distinctly ascertained; that the work done and material furnished by appellees up to the time when the work was wrongfully taken charge of by the railway company amounted to $80,000; that if they had been allowed to complete the work under the contract as they would have done but for the wrongs of the railway company, which are stated as in the other

paragraphs, there would have been due to them from the railway company $96,000; that the fair and reasonable cost of furnishing the materials and doing the work according to the contract would not have exceeded $65,000; that appellees were entitled to recover the difference between that amount and $80,000, for materials furnished and work done under the contract, and $5,000 profits, which would have been made by them on the work done and materials furnished by the railway company in the completion of the work, etc.

It is sufficient here to state that the answers by appellant generally and specifically denied all indebtedness, and all charges of wrong against it and its engineers and agents, and all charges of mistake and incompetency on the part of its engineer, whether as connected with estimates or otherwise. They further charged that the failure on the part of appellees to complete the work within the time fixed was caused by their own neglects and wrongs; that the company made liberal advances to them as the work progressed; and that they fraudulently failed to pay for materials and labor, and thus involved the company in expensive litigations. It was further alleged that the company did not take the work from appellees as charged; that, on the contrary, the work was done by their employees, under foremen of their own choosing, subject only to the proper directions of the company's engineers, and such supervision in the disbursement of moneys as was rendered necessary by the fraudulent conduct of appellees, etc.

The trial court made the following special findings of fact and conclusions of law:

"SPECIAL FINDINGS.

"(1) That the plaintiffs and defendant entered into the contracts mentioned and described in the plaintiffs' complaint as therein stated.

"(2) That in due time, and with a reasonable force, the plaintiffs entered upon the work of performing and completing the several contracts.

"(3) That on account of an insufficient number, and the incompetency or negligence, or both, of the local or resident engineers upon all the sections embraced in the two contracts in Illinois and the contract in Indiana, the prosecution of the work by the plaintiffs was greatly interfered with and delayed.

"(4) That when the contractors were ready to do the work, the necessary staking and alignment of the road had not been made or done, and the engineers' work in this respect, and also in furnishing the necessary *data* for bills of lumber for bridges, and proper designations as to where bridges, culverts, and piles were needed and expected to be placed, and the failure to procure the right of way in different places, each and all substantially interfered with and delayed the prosecution of the work.

"(5) That owing to the negligence, carelessness, incompetency, and mistakes of the company's engineers the statements of the work were in many instances incorrect.

"(6) That the plaintiffs could, and so far as the evidence shows would, have completed each of the several contracts mentioned in the complaint in the manner therein prescribed, and within the time limited by said contracts, if they had not been hindered and delayed by the fault, negligence, insufficiency, and incompetence of the defendant's engineers.

"(7) That the work was taken out of the control of the plaintiffs on the 20th day of October, 1881, and that the agents of said railway company incurred and permitted more expenses than even at that season of the year was necessary or proper for the completion of the work.

"(8) That had the defendant's employees been without fault, negligence, or incompetency, and had they not caused the delay of and interference with the work, the several contracts could and would have been completed at much less cost and expense before the season had become unfit for that kind of work, and by the first of November, 1881.

"(9) That the work was conducted by the employees of the defendant, after it was taken out of the hands of the plaintiffs, in a negligent, careless, and reckless manner, both as to the manner of doing the same, and making payments therefor, by reason of which that part of the work was made to cost at least twenty per cent. more than it ought or would have cost, if it had been done prudently, and with proper regard to the rights of the plaintiffs.

"(10) That a fair estimate of the work done upon the contracts at the prices agreed upon, and for extra work, and including reasonable estimates for losses on account of mistakes and delays, would have been $103,500.

"(11) That a fair estimate of the money actually paid by said railway company to Donnegan & Co., and properly paid in the completion of the work under the contracts, would not exceed $90,368.

"(12) As a conclusion of law upon these facts, and the evidence in the case, as taken by the stenographer, the court finds that there is due to the plaintiffs from the defendant the sum of thirteen thousand and one hundred and thirty-two dollars ($13,132), with interest at six per cent. allowed as damages, from the respective times at which the same should have been paid, amounting to twenty-three hundred and fifty dollars (2,350), making the sum of fifteen thousand four hundred and eighty-two dollars (15,482).

"(13) Thereupon the court finds that the plaintiffs are entitled to recover of and from the defendant, upon their complaint herein, the sum of fifteen thousand four hundred and eighty-two dollars (15,482).

"WILLIAM F. PARRET, Judge V. C. C."

The first proposition discussed by appellant's counsel is that the court below erred in its conclusion of law upon the above facts.

One of their contentions is that, in order to avoid the conclusive effect of the estimates made by the engineers of the railway company, it was incumbent upon appellees to prove that those estimates were the results of fraud, accident, or mistake; that the trial court did not so find; and that hence appellees are bound by those estimates, and cannot recover in this action. As we have seen, one of the stipulations in the contract was that the engineers of the railway company should make final estimates of the quality, character, and value of the work done by appellees, and that such final estimates should be final and conclusive as against appellees, "without further recourse or appeal." That stipulation in the contract did not and could not deprive appellees of the right to resort to the courts for a redress of wrongs, and for the recovery of whatever may have been due them. The reason why such a stipulation is invalid has been so fully stated by this court that nothing more is required here than a citation in the cases. Bauer v. Samson Lodge Knights of Pythias, 102 Ind. 262, 1 N. E. Rep. 571, and cases there cited; Supreme Council of the Order of Chosen Friends v. Garrigus, 104 Ind. 133, 3 N. E. Rep. 818.

But counsels' contention cannot be maintained upon any theory. They seem to have overlooked some of the findings of the court. The fifth finding was that, owing to the negligence, carelessness, incompetency, and mistakes of the company's engineers, the statements of the work were in many instances incorrect. That finding is entirely sufficient to show that the estimates made by the company's engineers were incorrect, and to entitle appellees to recover what was due them notwithstanding such estimates. The tenth and eleventh findings are in accord with and lend support to the fifth.

It is further insisted by appellant's counsel that there is no finding that appellees were wrongfully excluded from the work, and that such a finding was necessary to support the conclusions of law. That the work was taken out of the control of appellees by the railway company is definitely stated in the seventh finding; and, taking the findings as a whole, we think they sufficiently show that appellees were wrongfully excluded from the work. The contract proved that, if appellees did not employ such a force as the company's engineer might deem adequate to a completion of the work within the fixed time, he might employ such number of workmen as in his judgment would be necessary, pay them such wages as he might find necessary and expedient, and charge appellees with the amount, as so much paid to them under the contract, etc. Those provisions of the contract must be given a reasonable construction. It certainly was not intended by the parties that the engineer in charge should arbitrarily, at any time, and without any sort or shadow of reason, take the work out of the control of appellees, and employ men at his pleasure; nor could it have been intended that appellees should be subject to the whims of an incompetent, negligent, or dishonest engineer; and still less could it have been intended that the engineer might take the work out of the control of appellees, and employ men, etc., on account of delays caused by his own fault, negligence, and incompetency. There was at least an implied undertaking on the part of the railway company that the engineer to be put in charge with such extended powers should be competent, honest, and reasonably careful, and that he should not make delays caused by his wrongs a pretext for taking the work out of the control of appellees.

It was stated in the special findings that, on account of an insufficient number, and the incompetency and negligence of the local engineers, the prosecution of the work was greatly interfered with; that appellees were hindered and delayed in the prosecution and completion of the work by failure on the part of the company to procure right of way, and by failure on the part of its engineers to furnish proper stakes, to locate bridges, culverts, etc.; and that appellees could and would have completed the work within the time limited by the contract if they had not been hindered and delayed by the fault, negligence, insufficiency, and incompetency of appellant's engineers, etc. As before stated, the findings show that the work was taken out of the control of appellees, and, as we think, show that it was wrongfully taken out of their control.

It is further contended by appellant's counsel that the several findings of facts by the court below are not sustained by sufficient evidence. This court will not undertake to settle the conflicts that may be found in the 1,600 pages of evidence. That was for the learned judge who tried the case below, and had opportunities of judging of the credibility of witnesses which an appellate court cannot have. We have ascertained that there is evidence tending to sustain all of the findings of the court. That fact having been ascertained, the established rule applies, which forbids a reversal of the judgment upon the weight of the evidence.

In appellant's motion for a new trial fifty-one causes were assigned, the most of which have reference to the admission and exclusion of evidence. These are all urged here, but as to the most of them appellant's counsel have done nothing more in their brief than to restate the causes. That does not meet the requirements of the rule in relation to briefs in this court. In some instances the pages of the record where the rulings of the court may be found are not given. In many others it is impossible for us to determine, from the limited amount of the evidence pointed out by references to the pages of the record, whether or not there was error in the rulings. Parties asking for a reversal of a judgment must furnish references to such portions of the record as will show that errors intervened in the proceedings below.

One of appellees was allowed to testify that appellant's engineer in charge of the work on one

occasion directed that piling of a certain length should be furnished, and that after they were furnished upon the ground, of the length directed, the engineer ordered that portions should be cut off, which was done. Appellant's counsel insist that there was error in the admission of that testimony, for the reason that by the contract appellees were to be paid only for the lineal feet of piling actually used in the work. We are not convinced that the admission of the testimony was erroneous. If it was competent for any purpose, its admission was not available error. It was competent, we think, as tending to show, in some degree at least, that the engineer was incompetent and careless, and that appellees were hindered and delayed in the prosecution of the work, and hence were not in default. What weight should have been given to the testimony is another question. We have no means of knowing how much importance the court below may have attached to it, nor that it was considered at all by the court in fixing the amount of recovery in favor of appellees. But assuming that it was, and that the evidence was admitted for that purpose alone, we are yet not convinced that its admission was an error such as would justify this court in overthrowing the judgment. Appellant's engineers, under the terms of the contract, were put in charge of the work with almost absolute authority as to the manner in which the work should be done. Having and exercising such authority as the representative of appellant, it cannot be said that appellees and not appellant should suffer the loss occasioned by his mistake or wrong in ordering the piling to be of certain length.

One of the appellees was allowed to testify that, but for delays which he had mentioned as having been caused by appellant and its engineers, the work contracted for could have been completed within the time fixed in the contract. Some of appellees' subcontractors were also allowed to testify that they could have completed the work embraced within their contracts, on or before certained named dates within the time for completion fixed by the contract between appellant and appellees. It is contended by appellant's counsel that the testimony was incompetent because it consisted of inferences or opinions. The witnesses were railway builders, who, by reason of their experince, may properly be termed experts. An expert has been described as nothing more than a man of experience in the particular business to which the inquiry relates; as one having peculiar knowledge or skill in reference to the subject-matter of inquiry; as a person instructed by experience. Lawson, Exp. Ev. 195, 196; Doster v. Brown, 25 Ga. 24; Mobile Life Ins. Co. v. Walker, 58 Ala. 290. Non-expert witnesses may state their opinions as to matters with which they are especially acquainted, but which cannot be specifically described. Carthage Turnpike Co. v. Andrews, 102 Ind. 138, 1 N. E. Rep. 364; Fost v. Conroy, 92 Ind. 464.

It has been said that a non-expert witness must, so far as possible, state the facts upon which he bases his opinions; that, when the case is one in which all the facts can be presented to the jury no opinion can given; that there are cases where the witness cannot put before the jury in an intelligible and comprehensive form the whole ground of his judgment or opinion, and that in such cases he may give his opinion, first stating the facts, so far as he can, upon which the opinion based. We agree with counsel as to the nature of the testimony to which they object, but considering the qualifications of the witnesses, the nature of the subject-matter of the inquiry, and the statements of facts by the witnesses, we think that the testimony was competent. A person of experience in building railways can doubtless form a more correct judgment as to the length of time required to construct and complete a section of the road than persons without such experience can, even though they may have knowledge of all the facts which can be stated by witnesses. See Louisville, N. A. & C. R. Co. v. Frawley, 110 Ind. 18, 9 N. E. Rep. 594; Jeffersonville R. Co. v. Lanham, 27 Ind. 171; Lawson, Exp. Ev. 79-95, 460, and cases cited. Rogers, Exp. Test. § 116, and cases there cited.

We are not advised upon what ground appellant's question to appellee Conkey, as to the reliability and responsibility of appellee's sub ontractors, was ruled out. It may have been upon the ground that the question was not within the scope of a proper cross-examination. In the absence of anything more than is shown in the briefs, we must presume that the court below ruled correctly.

Nor can we say that the court erred in admitting testimony as to the cost of delivering piling along the line of road. Appellees contended that appellant had hindered and delayed them in the prosecution of the work, and had wrongfully taken the work out of their control, and completed it at a reckless and extravagant cost, and charged them with it. As bearing upon that issue, it was competent for them to show the reasonable cost of the work.

We do not think that it would be profitable to extend this opinion further upon the several causes assigned for a new trial, all of which we have examined. In our examination of the record, assisted by the arguments of counsel, we have discovered no error which would justify a reversal of the judgment.

Judgment affirmed, at appellant's costs.

NOTE.—One of the principal questions considered in the principal case is whether, where the parties stipulate in their contract that certain things are to be done to the satisfaction of a third person, the parties, in the absence of fraud and mistake, are absolutely concluded in the decision of such third person. The court arrives at the conclusion that the parties are not bound and that they cannot by any act of theirs deprive the courts of the power and jurisdiction to settle all differences between disputants. The court does not argue the question in this case, but contents itself with referring to a former decision of that State.

In Buaer v. Samson Lodge, etc.,[1] the case referred to, it was said that it is not within the power of an individual or corporation to create a judicial tribunal for the final and conclusive settlement of controversies. In a case in principle the same as this it was said: "To create a judicial tribunal is one of the functions of the sovereign power, and although parties may make such tribunals for themselves in any specific case by a submission to arbitration, yet the power is guarded by the most stringent rules. The weight of authority is very decidedly against the power of parties to bind themselves in advance that a controvorsy that may possibly arise shall be conclusively settled by an individual or corporation, and to that doctrine this court is committed. Kistler v. Indianapolis, 88 Ind. 460; Ins. Co. v. Morse, 20 Wall. 445; Mentz v. American Ins. Co., 79 Pa. St. 478; Wood v. Humphries, 114 Mass. —."

With all due deference to such a learned body as Supreme Court of Indiana, it seems to me that the weight of the decisions is not in accord with the principal case.

There is no doubt but that the courts have, I might say unanimously, decided that it is not within the power of any one to deprive them of their constitutional rights to try all questions of dispute in any controversy.[2]

But I think it will be found upon examination that the cases which hold that parties cannot oust courts of their jurisdiction by embodying in their contracts stipulations that all disputes and controversies arising in a transaction shall be submitted to the final abitrament of a certain person are not similar to the principal case.

The case of Ins. Co. v. Morse,[3] often cited to sustain that proposition, was a case in which the State of Wisconsin had passed a statute, in which it was declared that all insurance companies doing business in that State were to be sued and sue in the State courts, and not in the courts of the United States. It was held in that case that such a statute was unconstitutional, as conflicting with that part of the United States constitution[4] which declares that the judicial power of the United States shall extend to all cases in law or in equity arising under the constitution, the laws of the United States and to the treaties made or which shall be made under their authority to controversies between a State and citizens of another State and of different States. This case is one of those cited by the court in the principal case to sustain its decision.

It is true that Mr. Justice Hunt cites and quotes from several decisions which might seem to support the principal case. He cites the case of Stephenson v. Ins. Co.,[5] and as it is particularly explicit and receives the sanction of the learned judge, I will repeat the quotation: "While parties may impose as a condition precedent to applications to the courts that they shall first have settled the amount to be recovered by an agreed mode, they cannot entirely close the access to the courts of law. The law and not the contract prescribes the remedy, and the parties have no more right to enter into stipulations against the resort to the courts for their remedy in a given case than they have to provide a remedy prohibited by law; such stipulations are repugnant to the rest of the contract and assume to divest courts of their established jurisdiction as conditions precedent to an appeal, they are void."

This case would have justified the decision in the principal case that that part of the contract which said that the estimates of the engineer should be conclusive as against the contractor "without recourse or appeal," was invalid. But it would not have justified the court in deciding that his estimates could be disregarded or reviewed, in the absence of fraud, accident or mistake.

In this same case Justice Hunt quotes from Story's Equity Jurisprudence:[6] "And where the stipulation, though not against the policy of the law, yet is an effort to divest the ordinary jurisdiction of the common tribunals of justice, such as an agreement to arbitrate in case of dispute, a court of equity will not, any more than a court of law, interfere to enforce the agreement, but it will leave the parties to their own good pleasure in regard to such agreements. The regular administration of justice might be greatly impeded or interfered with by such stipulations if they were specifically enforced."

Here the author was holding that a contract of submission was illegal because the same could not be specifically enforced. This would not apply to the principal case, for there no power was sought from a court of equity to enforce the arbitration, for the arbitrator had already acted, the engineer had made his estimates.

And I think that it can be said that the United States Supreme Court did not intend the case of Ins. Co. v Morse[7] to be applied to a case like the principal one, for in the subsequent case of Kilberg v. United States[8] it was held that, where in a contract between the United States and for the transportation of certain stores by A between certain points, and the contract provided that the distance should be "ascertained and fixed by the chief quartermaster," that in absence of fraud and mistake, or such gross negligence or mistake as would necessarily imply bad faith, or a failure to exercise an honest judgment, the decision of the quartermaster would be final between the parties.

In the recent case of Hot Springs v. Maher,[9] it was held that where under a contract where the plaintiff built a railroad for the defendant company, provided "that all questions relating to quantity, quality or manner of construction of the work stipulated to be done shall be decided by the engineer in charge of such work, and his decisions shall be final and conclusive in all matters pertaining to said contract." The engineer made an estimate of the quantity and quality of the work done by the plaintiff and the amount due him therefor. Plaintiff refused to abide by this estimate on the ground that it was wrong, etc. In the absence of fraud or such gross mistake as would necessarily imply bad faith or failure to exercise an honest judgment, the estimates were conclusive between the parties.

Likewise, in several other cases it has been held that, where by contract the parties agree that one of them is to do certain work at a fixed price, the work to be done to the satisfaction of a certain individual, his judgment as to such work is conclusive, and the parties are not allowed to go behind it, in the absence of fraud and mistake.[10]

1 102 Ind. 262; s. c., 1 N. E. Rep. 571.

2 Pearl v. Harris, 121 Mass. 390; Robinson v. Georges Ins. Co., 17 Me. 31; March v. Eastern R. Co., 40 N. H. 548; McGunn v. Hanlin, 29 Mich. 480; Stromarer v. Neppenfeldt, 3 Mo. App. 429; Liverpool Ins. Co. v. Creighton, 51 Ga. 95.

3 20 Wall. 453.

4 Art. 3, § 2, U. S. Const.

5 54 Me. 70.

6 § 670.

7 20 Wall. 453.

8 97 U. S. 398.

9 S. C. Ark., 1887; 3 S. W. Rep. 639.

10 Moore v. Kerr, 4 Pac. Rep. 542, S. C. Cal., 1884; South

In the case of Butler v. Winona Mill Co.,[11] it was held that where, in a contract for personal services, the plaintiff stipulates that his compensation shall be fixed at the discretion of the defendant, he must, in the absence of fraud or bad faith, accept the amount so fixed, and cannot sue for a *quantum meruit*.

In the more recent case of Martinsburg, etc. R. Co. v. March,[12] in the Supreme Court of the United States, it was held that where a contract for the construction of a railroad provided that the company's engineer should in all cases determine question relating to its execution, including the several kinds of work to be done and the compensation earned by the contractor at the rates specified; that his estimate should be final and conclusive, and that "whenever the contract shall be completely performed on the part of the contractor and the engineer shall certify the same in writing under his hand, together with his estimates aforesaid, the said company shall, within thirty days after the receipt of such certificate, pay said contractor in current notes the sum which according to this contract shall be due."

In the absence of fraud or such gross mistake as would necessarily imply bad faith or a failure to exercise an honest judgment, the enginneer's action in the premises was conclusive upon the contracting parties.

Courts do not make contracts for parties, and agreements for the peaceful and quiet settlement of all question of difference arising out of dealings between man and man have always been encouraged by the courts as being to the best interest of all concerned. Contracts for arbitration have always been liberally construed.

In the principal case it was the intention, explicitly expressed, that the question of difference arising between defendant and plaintiff ahould be conclusively submitted to the engineer. The clause "without recourse and appeal" has no other meaning. It meant that, in the absence of fraud on the part of the engineer, that his decision should be final between the parties. It was perfectly proper and legitimate for the parties to make such a contract, and if they choose to make such a contract it was the duty of the court not to interfere with it. Fraud vitiates everything, and in its absence the contract of the parties ought to have been left as they intended it. They would not have ousted the jurisdiction of the court in any other method than that which has long been sanctioned by the courts as a perfectly just and proper method for adjustment of differences arising between persons in their mutual dealings. I may be mistaken, but it seems to me that, in the absence of fraud in any of its manifold forms and features, the court ought to have held that the parties were bound by that which they had agreed to in their contract, and that the decision of the engineer upon those questions which they had chosen for him to decide, in accordance with their agreement, should have been final and conclusive upon them.

WM. M. ROCKEL.

v. Bradley, 17 N. Y. 177; Wickoff v. Meyers, 44 N. Y. 145; Hudson v. McCarthey, 33 Wis. 340; Lynn v. Baltimore R. Co., 18 Cent. L. J. 77.

[11] S. C. Minn., 1881, 13 Cent. L. J. 216.

[12] 114 U. S. 549.

WEEKLY DIGEST

Of ALL the Current Opinions of all the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States.

1. ACCOUNT STATED—Interest—Evidence. —— Where plaintiff sues on an account stated, evidence of the amount of interest due thereon is admissible.—*Graham v. Myers*, S. C. Mich., Oct. 20, 1887; 34 N. W. Rep. 710.

2. ADMIRALTY—Appeal—Bond.—— On appeal in admiralty from the district court, appellant, who has given security on release of the vessel, need give only a bond to cover damages for delay, costs and interest on appeal.—*The Brantford City*, U. S. D. C. (N. Y.), June 29, 1887; 32 Fed. Rep. 324.

3. ADMIRALTY — Injury — State Limitation. —— The State statute of limitations does not bar an action in admiralty for a personal injury.—*Withcofsky v. Wier*, U. S. D. C. (N. Y.), Sept. 8, 1887; 32 Fed. Rep. 301.

4. AGENCY—Accounting.——Where a principal employs an agent, and furnishes him with money to prosecute an enterprise of known hazard and uncertainty, and after large expenditures have been made the enterprise is abandoned, the principal has a right to demand of the agent the account of the expenditures.—*Hartshorn v. Thomas*, N. J. Ct. Ch., Oct. 29, 1887; 10 Atl. Rep. 843.

5. AMENDMENT—Return — Judicial Discretion.——A court may, in its discretion, permit an amendment by a sheriff of his return of process, although he has been for months out of office by the expiration of his term.—*Jefferies v. Rudloff*, S. C. Iowa, Oct. 21, 1887; 34 N. W. Rep. 756.

6. APPEAL—Appealable Order.——An order denying a motion to vacate an order sustaining a demurrer, is not an appealable order.—*Dodge v. Bell*, S. C. Minn., Nov. 7, 1887; 34 N. W. Rep. 739.

7. APPEAL—Conflicting Evidence.——When the evidence is conflicting, the cause cannot be reversed on the weight of evidence, but must be affirmed.—*English v. Korn*, S. C. Cal., Oct. 29, 1887; 15 Pac. Rep. 300.

8. APPEAL—Evidence—Laches—Usury—Sale—Fraud.—

Upon appeal the court will not reverse the decision if it appears that a sale by a trustee was fictitious, the evidence to that effect being sufficient to overcome the presumption in favor of the trustee. A mortgagor who promptly resists a fraudulent sale, and institutes proceedings to set it aside, is not guilty of laches. An agent to solicit loans cannot charge the company for whom he acts with liability for usury taken by himself. —*Massachusetts, etc. Co. v. Boggs*, S. C. Ill., May 12, 1887; 13 N. E. Rep. 550.

9. APPEAL—Frivolous—Costs.——Where a court dismissed a bill to set aside an award, from which an appeal was taken, for which there was no good reason, the appellee was allowed $50 beyond the ordinary costs. —*Port Huron, etc. Co. v. Callaman*, S. C. Mich., Oct. 20, 1887; 34 N. W. Rep. 678.

10. APPEAL—Loss of Papers.—— Where it appears that the statement of the case upon appeal was lost without appellant's fault and the judge has forgotten the exceptions, a new trial should be granted.—*Greenville v. Old, etc. Co.*, S. C. N. Car., Oct. 18, 1887; 3 S. E. Rep. 505.

11. APPEAL—Notice — Dismissal. —— An appeal will not be dismissed for want of notice thereof to some of the adverse parties, when such parties were interested in having the judgment set aside, and the relief so sought might be granted without affecting their interests.—*Lilienthal v. Carivita*, S. C. Oreg., Oct. 18, 1887; 15 Pac. Rep. 280.

12. APPEAL—Presumption.——Upon appeal it will be presumed that the taxation of costs in the trial court was correct, if nothing to the contrary is shown by the bill of exceptions.—*Whisler v. Lawrence*, S. C. Ind., Oct. 21, 1887; 13 N. Rep. 576.

13. APPEAL—Record—Exceptions.——When there is no error apparent on the record and no exceptions are filed, the judgment will be affirmed.—*Wilson v. Sheppard*, S. C. N. Car., Oct. 18, 1887; 3 S. E. Rep. 499.

14. ASSIGNMENT — For Benefit of Creditors — Preferences.——An assignment for the benefit of creditors, giving preferences made in New York by a firm doing business there, is valid in New Jersey, relative to a firm doing business in New York, though one of its members resides in New Jersey.—*Halsted v. Straus*, U. S. C. C. (N. J.). Oct. 5, 1887; 32 Fed. Rep. 279.

15. ASSIGNMENT—For Creditors—Gift to Wife—Rights of Assignee.——A and B, copartners, gave A's homestead to his wife, subject to a mortgage, which A assumed. The firm subsequently assigned for the benefit of their creditors, and the assignee paid off the mortgage, had it assigned to him, and sued A's wife thereon. This property was not mentioned in the assignment: *Held*, that the assignee had no right of action.—*Byles v. Kellogg*, S. C. Mich., Oct. 20, 1887; 34 N. W. Rep. 671.

16. ASSIGNMENT—For Creditors—Partnership—Oath.—An assignment, purporting to be a general assignment for the benefit of creditors, though not expressly so stated, comes under the law relative thereto. Upon assignment by a firm, the oath of one partner to the papers is sufficient, but if the oath is added after registration, there must be a new acknowledgment and registration.—*Lookout Bank v. Noe*, S. C. Tenn., Oct. 4, 1887; 5 S. W. Rep. 433.

17. ATTACHMENT—Grounds—Proof—Preferences.—— Proof of one of the grounds alleged for an attachment is sufficient, and such ground need not be proved by direct testimony. A debtor can, in Missouri, prefer one creditor to another, though such action may be a ground for attachment against the debtor.—*Strauss v. Abrahams*, U. S. C. C. (Mo.), Oct. 12, 1887; 32 Fed. Rep. 310.

18. ATTACHMENT—Indemnity — Evidence. —— In an action against a sheriff and the sureties on an indemnity bond for wrongfully levying an attachment, the return of the sheriff on such attachment is evidence against him and the sureties. A notice of claim to the sheriff, which he affixes to the attachment, is an admission of record. What is competent evidence of the identity of property attached.—*Crawford v. Nolan*, S. C. Iowa, Oct. 17, 1887; 34 N. W. Rep. 754.

19. ATTACHMENT—Wrongful Levy—Value—Exemplary Damages.——Where, as a defense to a suit to an open account, damages for an unlawful levy of an attachment are claimed, the amount of insurance the defendant had on the goods is not proof of their value, nor is the appraisement made by the sheriff conclusive, and if the levy was wantonly made, exemplary damages may be allowed.—*Blum v. Stein*, S. C. Tex., Oct. 18, 1887; 5 S. W. Rep. 454.

20. BAILMENT — Accommodation — Care. —— Where valuables were left with the defendants as accommodation depositaries, which they put in their safe, whence they were abstracted by one of their employees, who was occasionally sent to the safe, the question of their exercise of ordinary care was one for the jury.—*Glover v. Burbridge*, S. C. S. Car., Oct. 6, 1887; 3 S. E. Rep. 471.

21. BAILMENT — Deposit — Diligence. —— Where a bailee, not for hire, puts the money deposited with him in a safe, and it is stolen, he is not liable.—*Carlyon v. Fitzhenry*, S. C. Ariz., Sept. 1, 1887; 15 Pac. Rep. 273.

22. BANKRUPTCY—Discharge of Partner—Cancellation of Judgment.——A discharge in bankruptcy of a partner, discharges a copartnership debt against him, when it appears that, before the petition in bankruptcy was filed, the firm had been dissolved, a general assignment had been made, and the debt was provable against the bankrupt's estate. A judgment debtor, after his discharge in bankruptcy, may have the judgment canceled of record, though it was obtained after the filing of his petition and before his discharge in bankruptcy.—*West P. Bank v. Gerry*, N. Y. Ct. App., Oct. 4, 1887; 13 N. E. Rep. 453.

23. BANKS AND BANKING—Agent.——An agent is not responsible for interest if he collects a certificate of deposit which is payable on demand, but which draws interest only if held until its maturity, he having received no instructions on the subject of interest.—*Ide v. Bremer, etc. Bank*, S. C. Iowa, Oct. 21, 1887; 34 N. W. Rep. 749.

24. BENEVOLENT SOCIETIES—Suspension—Mandamus. ——A member of a benevolent society, a corporation, can only be suspended after he has had an opportunity to introduce testimony in his behalf, and where its constitution and by-laws contain no definition of offenses against it, nor provisions for imposing penalties, *mandamus* will lie to restore him when suspended for not paying such a fine.—*Erd v. Bavarian, etc. Assn.*, S. C. Mich., Oct. 13, 1887; 34 N. W. Rep. 555.

25. BOUNTY—County.——Construction of the statutes of New York relative to the power of counties to contract debts for bounties and the powers and duties of county treasurers with reference to such debts.—*Parker v. County of Saratoga*, N. Y. Ct. App., Oct. 4, 1887; 13 N. E. Rep. 508.

26. BRIDGES—Repairs — Highways. —— Construction of the statute of Illinois relative to bridges on highways, the repairs upon the same and the powers and duties of county supervisors in connection with this subject.—*County of Macon v. People*, S. C. Ill., Sept. 27, 1887; 13 N. E. Rep. 220.

27. CARRIER—Bill of Lading. —— Where goods are shipped to a consignee, and the carrier gives a through bill of lading and transfers the goods to another carrier with a transfer sheet, and the second carrier delivers them to the consignee without demanding the bill of lading, such second carrier is liable for the value of the goods to the holder of the bill of lading, which had been attached to a draft.—*Farman v. Union, etc. Co.*, N. Y. Ct. App., Oct. 4, 1887; 13 N. E. Rep. 587.

28. CHATTEL MORTGAGE — Fraud—Assignment.——A chattel mortgage is not fraudulent merely because it secures slightly more than the debt actually due to the mortgagee. A chattel mortgage is not to be considered as an assignment when the mortgagee takes immediate possession and the mortgagor believes the property to be worth more than the debt.—*Van Patten v. Thompson*, S. C. Iowa, Oct. 24, 1887; 34 N. W. Rep. 763.

29. CHATTEL MORTGAGE—Priority.——A executed to B two mortgages, in which the property was described as subject to a prior unrecorded mortgage to C, and subsequently executed a third mortgage to B, wherein for description reference was made to the prior two mortgages. *Held*, that the last mortgage was subject to the one to C.—*Eaton v. Tuson*, S. J. C. Mass., Oct. 21, 1887; 13 N. E. Rep. 488.

30. COLLISIONS — Boat at Pier—Landing.——When a vessel, in trying to land at a pier allows itself to swing in at another pier and injure a canal-boat properly moored and out of the vessel's proper course, the vessel is liable.—*The Canima*, U. S. C. C. (N. Y.), March 6, 1885; 32 Fed. Rep. 302.

31. COLLISIONS — Tugs — Tows. —— When a tug has slowed up to allow another tug and its tow to pass her, and afterwards starts her engine and runs into the tow, she is alone liable for the damage.—*Hunt v. The Mischief*, U. S. D. C. (N. Y.), Sept. 23, 1887; 32 Fed. Rep. 304.

32. CONSTITUTIONAL LAW—Railway Commission—Judicial Powers. —— Congress cannot confer judicial powers on a legislative commission and compel the production of the books and papers of the officers of corporations indebted to the government or the production of the books and papers of the Central Pacific Railway.—*In re Pacific Railway Commission*, U. S. C. C. (Cal.), Aug. 29, 1887; 32 Fed. Rep. 241.

33. CONTEMPT—Appeal—Affirmance.——When an appeal from a fine for a contempt has been affirmed, the trial court cannot modify nor remit the fine.—*In re Griffin*, S. C. N. Car., Oct. 24, 1887; 3 S. E. Rep. 515.

34. CONTRACT—Assignment—Rescission.——Where A contracts with B, by which contract he is to receive an interest in the proceeds of a certain gin for six years, which he assigns to C, and subsequently cancels his contract with B, who moves away the gin, A is liable to C on the implied agreement that C was to enjoy the fruits of the contract.—*Alston v. Gillespie*, S. C. Ga., May 4, 1887; 3 S. E. Rep. 562.

35. CONTRACT — Lobbying.——A contract for services in lobbying with the members of the legislature is illegal.—*Sweeney v. McLeod*, S. C. Oreg., Oct. 17, 1887; 15 Pac. Rep. 275.

36. CONTRACT — Will — Statute of Frauds.——A contract to leave money to another by will in consideration of services to be performed by that other may be made orally and will be binding on the estate of the promisor. —*Wellington v. Apthorp*, S. J. C. Mass., Sept. 24, 1887; 4 N. Eng. Rep. 883.

37. CONTRACT — Written — Alteration by Parol.——A written contract may be annulled or in any way added to or changed by a subsequent parol contract, which new contract may be proved by the old contract and by parol.—*Delaney v. Linder*, S. C. Neb., Oct. 26, 1887; 34 N. W. Rep. 630.

38. CORPORATION — Dissolution —Action For.——The corporation, is a necessary party to a bill to wind it up and decree a dissolution, which cannot be done on such bill, unless sufficient cause be shown.—*Hurst v. Coe*, S. C. App. W. Va., Sept. 23, 1887; 3 S. E. Rep. 564.

39. CORPORATION—Foreign—Filing Articles.——A foreign corporation can defend an action for work and labor alleged to have been done at its request without having filed its articles of incorporation in the proper county.—*Weeks v. Garibaldi, etc. Co.*, S. C. Cal., Oct. 25, 1887; 15 Pac. Rep. 302.

40. CORPORATION—Franchise—Assignment.——A corporation created by special act cannot sell, transfer or assign its franchise without statutory enactment.—*Fietsam v. Hay*, S. C. Ill., Sept. 28, 1887; 13 N. E. Rep. 501.

41. CORPORATION —Subscription—Tender—Refusal.—— A tender of full payment for the stock subscribed and a demand for the certificate, which tender is without legal cause declined and the issue of the certificate refused, releases the subscriber from any obligation to pay when the corporation has become insolvent.—*Potts v. Wallace*, U. S. C. C. (N. Y.), Oct. 3, 1887; 32 Fed. Rep. 272.

42. COUNTY TREASURER — Bond—Limitations.——An action on the bond of a county treasurer for selling to the plaintiff certain lands for delinquent taxes, which sale is void for want of proper proceedings by the treasurer and other officers, may be brought within ten years after the cause of action accrued.—*Alexander v. Overton*, S. C. Neb., Oct. 18, 1887; 34 N. W. Rep. 629.

43. COURTS—Times of Holding—Constitution.——The terms of courts can only be altered by statutes passed at the general assembly next preceding the general election for judges of said court, and the act of 1881 cannot nullify the act of 1885, amending the act of 1879.—*Kelley v. People*, S. C. Ill., Sept. 28, 1887; 13 N. E. Rep. 512.

44. CREDITOR'S BILL — Parties—Return—Multifarious. ——A judgment creditor in a creditor's bill need not allege that his execution has been returned *nulla bona*. The bill may be in behalf of himself and other creditors who may come in, though they are not judgment creditors, and may include as defendants several persons, to whom at different times the debtor has conveyed different parcels of his property.—*State v. Foot*, S. C. S. Car., Oct. 6, 1887; 3 S. E. Rep. 546.

45. CRIMINAL LAW—Assault and Battery. —— On an indictment for an assault with intent to commit great bodily harm, the jury should have been charged that, if the evidence justified them, they might find the defendant guilty as charged in the bill of indictment, or otherwise of simple assault and battery, if the proof sustained that charge.—*State v. Welch*, S. C. Iowa, Oct. 24, 1887; 34 N. W. Rep. 765.

46. CRIMINAL LAW — Evidence—Co-defendant.——In a prosecution for a crime the declarations of a co-defendant, not made when he engaged in the criminal enterprise, are not admissible in evidence against the defendant.—*Sample v. People*, S. C. Ill., Sept. 27, 1887; 13 N. E. Rep. 536.

47. CRIMINAL LAW—Forcible Detainer—Lawful Possession.——Where defendant moved upon the land of B with his consent, and subsequently refused to leave at the request of C, who had bought the land from B, until he was put out he cannot be arrested for forcible detainer, under Michigan laws.—*Appleton v. Buskirk*, S. C. Mich., Oct. 27, 1887; 34 N. W. Rep. 708.

48. CRIMINAL LAW—Forgery—Weight of Evidence.—— Where defendant, on a trial for forgery of A's name, testified that to the best of his recollection, A said he could use his name on the bond, and B testified that A admitted that he did at one time authorize defendant to sign his name, all of which A denied, the evidence warranted a verdict of guilty.—*Aholtz v. People*, S. C. Ill., Sept. 27, 1887; 13 N. E. Rep. 524.

49. CRIMINAL LAW — Homicide —Insanity.——An instruction, that the test of the defendant's resposibility, on a trial for a homicide with a defense of insanity, was whether at that time he had capacity and reason sufficient to distinguish between right and wrong as to that particular act, and had power to know that the act was wrong and criminal, and would subject him to punishment, is correct.—*State v. Mowry*, S. C. Kan., Oct. 8, 1887; 15 Pac. Rep. 282.

50. CRIMINAL LAW —Indictment—Non-feasance in Office.——An indictment against a justice of the peace, wherein it is alleged that on certain days he disposed of certain criminal actions, without mentioning the names of the accused, and did fail to furnish the clerk with a list containing the names of such parties as required by law, sufficiently charges the offense.—*State v. Foy*, S. C. N. Car., Oct. 24, 1887; 3 S. E. Rep. 524.

51. CRIMINAL LAW—Murder—Manslaughter.——After the killing of the deceased is proved, the burden of proof is on the defendant to reduce the killing from murder to manslaughter.—*State v. Jones*, S. C. N. Car., Oct. 18, 1887; 3 S. E. Rep. 507.

52. CRIMINAL PRACTICE—Abstract—Bill of Exceptions —Evidence.——A bill of exceptions must show affirmatively that it contains all the evidence given in the cause, nothing outside of it will be considered. If the record fails to show the materiality of a question and

an objection to it was sustained it will be presumed that the ruling was not prejudicial.—*State v. Butterfield*, S. C. Iowa, Oct. 22, 1887; 34 N. W. Rep. 750.

53. CRIMINAL PRACTICE—Trial Justice—Sentence.——A trial justice cannot settle a criminal case by receiving the costs from the defendant, and discharging him, without judgment or a continuance, on his agreement to present himself on notice for sentence at a future time.—*Com. v. Maloney*, S. J. C. Mass., Oct. 21, 1887; 13 N. E. Rep. 482.

54. CRIMINAL PRACTICE — Venue. —— The statues of Minnesota authorizing a change of venue from one justice to another do not apply to examinations in criminal cases.—*State v. Bergman*, S. C. Minn., Nov. 7, 1887; 34 N. W. Rep. 737.

55. CRIMINAL PRACTICE—Verdict—Degree of Crime.—— Where a crime is divided into degrees the verdict must specify the degree of the crime of which he is guilty, but the defendant is not entitled to a discharge because the judgment is reversed for this reason. — *People v. Travers*, S. C. Cal., Oct. 8, 1887; 15 Pac. Rep. 293.

56. DEED—Contract—Description.——A contract to convey a stipulated quantity of land at a stated price per acre is fulfilled by the delivery of a deed to that effect to the vendee and its acceptance by him. A description by metes and bounds stating the number of acres is not a covenant that the tract contains that number of acres.—*Brumbaugh v. Chapman*, S. C. Ohio, Nov. 1, 1887; 13 N. E. Rep. 584.

57. DEED—Delivery — Attachment.——Where a son agreed to convey land to his father and mailed a deed to him, such mailing did not constitute a delivery that would not be good against an attachment levied after the execution of the deed and before its receipt.—*Deen v. Nelson*, S. C. Iowa, Oct. 26, 1887; 34 N. W. Rep. 809.

58. DEED—Reservation—Exception.——Where a deed reserves to the owner of the estate and others adjoining a right of passage-way over the within granted premises, as specified in a former deed, which right of way had been created many years before and afterwards conveyed to a grantee, such provision is an exception and not a reservation.—*Wood v. Boyd*, S. J. C. Mass., Oct. 20, 1887; 13 N. E. Rep. 476.

59. DEED—Varying by Parol—Trust.——A deed absolute on its face cannot be varied by evidence of a parol agreement, that the grantee should pay a note given for the purchase money by the grantor at his purchase. If there was a parol promise to pay the note, its payment by the grantor does not give him a resulting trust in the land.—*Boozer v. Teague*, S. C. S. Car., Oct. 10, 1887; 3 S. E. Rep. 551.

60. DESCENTS AND DISTRIBUTIONS — Advancements—Widow.——Under the Iowa laws, advancements to children are not assets of the decedent's estate as to the widow who has renounced under the will. They are to be regarded as part of the estate only with reference to the children and are to be charged to those who receive them as portions of their respective shares.—*In re Will of Miller*, S. C. Iowa, Oct. 25, 1887; 34 N. W. Rep. 769.

61. DURESS — Instruction.——Where a wife pleads that a note signed by her was extorted by duress by her husband, it is improper to instruct the jury that it is immaterial whether the plaintiff knew of such duress or not.—*Fairbanks v. Snow*, S. J. C. Mass., Oct. 20, 1887; 13 N. E. Rep. 596.

62. EJECTMENT — Adverse Possession — Deeds — Executor.——A deed, under which one in adverse possession has been holding land, is admissible in evidence, whether valid or not. A deed by an executor, where all the jurisdictional facts appear of record except the confirmation by the probate court, is admissible in evidence forty years thereafter.—*King v. Merritt*, S. C. Mich., Oct. 13, 1887; 34 N. W. Rep. 689.

63. EJECTMENT — Title—Instructions.——An instruction in ejectment, which charges that the plaintiff must establish his title, and correctly states the law as to a good tiltie, is correct, the defendant relying solely on possession.—*Pearson v. Simmons*, S. C. N. Car., Oct. 18, 1887; 3 S. E. Rep. 503.

64. EMINENT DOMAIN—Streets—Damages.——The fee of the streets belongs to the city of Chicago. Damages need only be paid in advance when private property is actually appropriated. Special damage to property for maintaining a street railway in front of it must be remedied by an action at law and not by injunction.—*Lorie v. North C. C. R. Co.*, U. S. C. C. (Ill.), May 18, 1887; 32 Fed. Rep. 270.

65. EQUITY—Parties.——A suit in equity cannot be brought in the name of one party to the use of another.—*Kellam v. Sayre*, S. C. App. W. Va., Sept. 23, 1887; 3 S. E. Rep. 589.

66. EQUITY — Parties—Restraining Executions.——A bill in equity, filed against a sheriff to restrain him from selling certain property to satisfy numerous fee-bills and executions, pleading the statute of limitations, is properly dismissed on demurrer when the judgment plaintiffs are not made parties to it.—*Howell v. Foster*, S. C. Ill., Sept. 27, 1887; 13 N. E. Rep. 527.

67. EQUITY — Specific Performance—Contract—Public Policy.——A contract between two gas companies not to compete with each other in certain districts of a city is against public policy, and a court of equity will not enforce a specific performance of it at the suit of either party.—*Chicago, etc. Co. v. People's, etc. Co.*, S. C. Ill., Sept. 26, 1887; 13 N. E. Rep. 169.

68. ESTATES — Life — Remainder — Mortgage. —— A grant to M and her heirs by her present husband conveys a life estate to M and a vested remainder to the children then living, opening to let in after-born children, and a mortgage by M can only affect the life estate.—*Lehndorf v. Cope*, S. C. Ill., Sept. 28, 1887; 13 N. E. Rep. 505.

69. ESTATES — Tenant by Entirety — Limitation—Estoppel.——A tenant by the entirety in possession is not affected by any proceeding of which she had no notice. A tenant in remainder is not affected by any acts done by the life-tenant nor does the statutes of limitation run against them until their right of entry has accrued. One who executes a deed in which two persons are described as man and wife is estopped to deny that they are man and wife.—*Orthwein v. Thomas*, S. C. Ill., Sept. 28, 1887; 13 N. E. Rep. 564.

70. ESTOPPEL—Statement of Mortgagee—Assignee.—— An assignee of a mortgage is not estopped by subsequent statements of the mortgagee, that he had nothing against the mortgagor, against a purchaser who bought relying upon such statements.—*Rogers v. Lawrence*, S. C. Ga., April 13, 1887; 3 S. E. Rep. 559.

71. EVIDENCE—Account Book.——Entries by marks in an account book by the plaintiff, who could not write, of the number of loads of sand delivered to the defendant, are admissible in evidence. Where the marks were transferred by him to his books from entries made on his cart by his servant, the servant must testify as to the correctness of his entries.—*Miller v. Shay*, S. J. C. Mass., Oct. 20, 1887; 13 N. E. Rep. 468.

72. EVIDENCE—Expert Testimony.——The opinion of one who has served as a locomotive fireman for four years is admissible as expert testimony as to how soon and within what distance a train can be stopped.—*Grinnell v. Chicago, etc. Co.*, S. C. Iowa, Oct. 24, 1887; 34 N. W. Rep. 758.

73. EVIDENCE —Privileged Communications.——Letters of a husband to his wife are privileged communications, and after the death of the wife cannot be given n evidence against the husband.—*Bowman v. Patrick*, U. S. C C. (Mo.), Sept. 28, 1887; 32 Fed. Rep. 368.

74. EXECUTION — Exemption — Appraisement. —— Pennsylvania statutes construed with reference to exemptions from execution. When appraisement of property should be made.—*Stewart's Appeal*, S. C. Penn., May 23, 1887; 10 Atl. Rep. 833.

75. EXECUTION — Sale —Vacation — Scire Facias.—— Where, by bill in chancery by one defendant, to which his co-defendant was not made party, an execution

sale was set aside and the satisfaction of the judgment vacated, a *scire facias* to revive the judgment against the co-defendant cannot be sustained.—*Lackey v. Steere*, S. C. Ill., Sept. 27, 1887; 13 N. E. Rep. 518.

76. EXECUTORS AND ADMINISTRATORS—Appointment. ——After thirty days after the death of the decedent, the court may appoint any of the distributees of an estate to be administrator, or it may appoint a creditor or stranger, but a resident is to be preferred to a non-resident.—*Bridgeman v. Bridgeman*, S. C. App. W. Va., Sept. 23, 1887; 3 S. E. Rep. 580.

77. EXECUTORS—Deceased Commissioner—Action.—— In an action by the administrator of a deceased special commissioner on a bond given for deferred payments on land sold by him, it is sufficient to aver that the action is for the use of the substituted commissioner.—*Triplett v. Goff*, S. C. App. Va., September Term, 1887; 3 S. E. Rep. 525.

78. EXECUTORS — Partition Sale — Division. —— The rights of heirs to the proceeds of a partition sale do not accrue until the assets of the estate are converted into money or property, accepted in lieu thereof, and heirs purchasing at such sale may be charged interest till the date of payment, or settlement and distribution.—*Turbeville v. Flowers*, S. C. S. Car., Oct. 6, 1887; 3 S. E. Rep. 542.

79. EXECUTORS—Receiver—Suit by Administrator.—— An administratrix filed a bill to marshal the assets of an estate, and a receiver was appointed, and subsequently the administratrix sued on a note due the estate: *Held*, that it was error to grant a nonsuit, no objection to the suit being made by the court or the receiver.—*Barbour v. Albany Lodge*, S. C. Ga., April 28, 1887; 3 S. E. Rep. 560.

80. EXEMPTION.——Under the law of Iowa, a lawyer's law books and office furniture are exempt from attachment or execution.—*Abraham v. Davenport*, S. C. Iowa, Oct. 24, 1887; 34 N. W. Rep. 767.

81. FEES — Witness —Travel.——Where three cases were heard together before a master with the same attorneys, and the witnesses were subpœnaed only in one case, the witnesses were entitled to but one travel.—*Barber v. Parsons*, S. J. C. Mass., Oct. 21, 1887; 13 N. E. Rep. 491.

82. FORCIBLE ENTRY AND DETAINER—Proof.——Under the statute, proof, that the party unlawfully in possession refuses to vacate on proper notice, will sustain the action for forcible entry and detainer.—*Estabrook v. Hateroth*, S. C. Neb., Oct. 26, 1887; 34 N. W. Rep. 634.

83. FRAUD—Statute of Frauds—Specific Performance. ——Specific performance of a parol contract to convey lands will not be decreed when the testimony shows that the plaintiff occupied as tenant, and made no permanent improvements.—*Clark v. Clark*, S. C. Ill., Sept. 2, 1887; 13 N. E. Rep. 553.

84. FRAUDS—Statute of—Part Performance.——A person made a parol promise to re-convey land to his mother. Her payment of the purchase money mortgage on the land, and her possession of the land not in pursuance of the alleged contract, do not take the contract out of the operation of the statute of frauds.—*Boozer v. Teague*, S. C. S. Car., Oct. 10, 1887; 3 S. E. Rep. 551.

85. FRAUDS—Statute of—Real Estate—Contract.——A writing purporting to execute a contract for the sale of land, which does not specify the purchase price nor the time of payment, is not sufficient under the statute of frauds, nor is it aided by a subsequent letter of such party, instructing his agent how to fill out the contract, if one should be made.—*Webster v. Brown*, S. C. Mich., Oct. 20, 1887; 34 N. W. Rep. 676.

86. FRAUDULENT CONVEYANCE—Knowledge of Vendee. ——In order to impeach an absolute conveyance as a fraud on the creditors of the vendor, it must be shown that the vendee participated in it.—*Beasley v. Bray*, S. C. N. Car., Oct. 10, 1887; 3 S. E. Rep. 497.

87. FIXTURES—Mortgage— Title. —— Machinery, except the motive power, for the manufacture of flour by the roller system, might, prior to the act of 1885, be attached to the floor by bolts and still, by agreement, remain the property of the vendor against a subsequent mortgagee of the realty. The machinery supplying the motive power, attached to the floor, would be subject to a mortgage of the realty.—*Case M. Co. v. Garver*, S. C. Ohio, Oct. 25, 1887; 13 N. E. Rep. 493.

88. GARNISHMENT.——It is the duty of the garnishee to set up all defenses in law and equity against his liability. Upon appeal from a justice, he may set up defenses not relied upon before the justice.—*Chicago, etc. Co. v. Meyer*, S. C. Ind., Oct. 18, 1887; 13 N. E. Rep. 576.

89. GARNISHMENT — Contract — Services. —— Where completion of a contract is a condition precedent to payment, the debtor cannot be garnished till such completion. Where, by contract, all bills for labor are to be paid before final payment, and upon failure of the contractor to complete the contract, the owner has agreed to pay the laborers, he cannot be garnished as a debtor of the contractor, the amount due the laborers being greater than the amount due the contractor.—*Kiely v. Bertrand*, S. C. Mich., Oct. 20, 1887; 34 N. W. Rep. 674.

90. GRAND JURY.——A grand jury is illegally constituted if several of its members are absent, and an indictment found by it is invalid, and should be quashed.—*State v. Bowman*, S. C. Iowa, Sept. 24, 1887; 34 N. W. Rep. 767.

91. GUARANTY—Estoppel—Notice — Default. —— One who intrusts a written guaranty to another, is estopped to deny that that person was authorized to deliver it. Notice of acceptance is not necessary when the guaranty is direct and absolute. The failure to give notice of default to the guarantor is a matter of defense to be set up by him.—*Snyder v. Click*, S. C. Ind., Oct. 20, 1887; 13 N. E. Rep. 581.

92. GUARDIAN AND WARD—Contract—Parol Evidence. ——Where, at an accounting between a guardian and a ward, by contract in writing it was determined that so much was due the ward, which was to be invested by the guardian in land, to be held by him as trustee for the ward, a contemporaneous parol agreement on the subject cannot be proved.—*Parker v. Morrill*, S. C. N. Car., Oct. 18, 1887; 3 S. E. Rep. 511.

93. HABEAS CORPUS—Rearrest.——A discharge upon *habeas corpus* merely terminates the proceedings in which the arest was made. Upon new proceedings a rearrest may be made, and no notice need be taken of the prior prosecution.—*State ex rel. v. Holm*, S. C. Minn., Nov. 7, 1887; 34 N. W. Rep. 748.

94. HIGHWAYS—Gravel Roads — Reassessment. — Gravel roads, in Indiana, when made, become public highways. The cost of making them must be reassessed upon the property holders, but must not exceed the benefit accruing from them.—*County of Montgomery v. Fullen*, S. C. Ind., Oct. 18, 1887; 13 N. E. Rep. 574.

95. HOMESTEAD—Setting Apart—Business Property.— On a petition by the widow to set apart a homestead, none having been selected during the husband's life, and his only separate real property being a four-story business block, which cannot be divided without material loss, the court must refuse the petition, nor in such case can it substitute therefor the payment of $5,000 to the widow.—*In re Noah*, S. C. Cal., Oct. 25, 1887; 15 Pac. Rep. 290.

96. HUSBAND AND WIFE—Fraud—Conveyance to Wife. ——Circumstances stated under which, from lapse of time and other considerations, a conveyance by a husband to his wife is held to be fraudulent in law against his creditors.—*Hubbard v. Little*, N. J. Ct. Ch., Nov. 2, 1887; 10 Atl. Rep. 859.

97. HUSBAND AND WIFE—Her Contract.——Where a wife purchases at a commissioner's sale a tract of land, and agrees with B that if he will pay for her the purchase money that he may have all of it but twenty acres, which he does and goes into possession, such contract is not valid against her, but B has a lien on the land, which may be enforced by its sale, and though he is chargeable for rent, he may deduct for permament

improvements and taxes paid.—*Moore v. Ligon*, S. C. App. W. Va., Sept. 23, 1887; 3 S. Rep. 572.

98. HUSBAND AND WIFE — Her Earnings — Garnishment.——A debtor, for washing done by a wife, though the contract was made with the husband as her agent, cannot be garnished as a debtor of the husband.—*Seward v. Arms*, S. J. C. Mass., Oct. 21, 1887; 13 N. E. Rep. 487.

99. HUSBAND AND WIFE—Separation — Allowance.—— Where, after a six week's residence together, the husband and wife separate, she receiving a sum of money in full of all marital claims, alimony and support, she, upon his death, is not entitled to a reasonable allowance till his estate is settled.—*In re Noah*, S. C. Cal., Oct. 24, 1887; 15 Pac. Rep. 287.

100. INNKEEPER—Guest—Bolt.——A guest of an inn, who locks the door of his room, not noticing a bolt near the top of the door, is not precluded from recovering the value of property stolen from him during the night.—*Spring v. Hager*, S. J. C. Mass., Oct. 21, 1887; 13 N. E. Rep. 479.

101. INSURANCE FIRE —Mortgagee—Reforming Policy. ——Where a mortgagee seeks to insure his interest, and on suggestion of the insurance company's agent, the policy is made in the name of A, who then had possession but his title was contested by B, loss payable to the mortgagee: *Held*, that after the title was adjudged to B, and the property had burned down, the mortgagee might have the policy reformed and might recover thereon.—*Balen v. Hanover, etc. Co.*, S. C. Mich., Oct. 13, 1887; 34 N. W. Rep. 654.

102. INSURANCE—Life—Issue in New York—Delivery in Missouri.——A policy of life insurance isssued in New York on an application made in Missouri, but delivered to the assured in Missouri, is subject to the Missouri law governing life insurance policies issued in that State.—*Wall v. Equitable, etc. Soc.*, U. S. C. C. (Mo.), 1887; 32 Fed. Rep. 273.

103. INTOXICATING LIQUORS — Illegal Sale —Evidence. ——On a complaint for bringing intoxicating liquors into a city, having reasonable cause to believe they were to be sold in violation of law, evidence of the search of consignee's house before defendant's arrest, of what was found, of the acts and conduct of the consignee, and of the reputation of the consignee as a liquor dealer, are admissible.—*Com. v. Harper*, S. J. C. Mass., Oct. 19, 1887; 13 N. E. Rep. 459.

104. INTOXICATING LIQUORS—Landlord and Tenant.—— In Iowa, a lessor of premises used by the lessee for the sale of intoxicating liquors is responsible therefor, if knowledge of such use is proved against him.—*Littleton v. Harris*, S. C. Iowa, Oct. 26, 1887; 34 N. W. Rep. 800.

105. INTOXICATING LIQUORS — Revocation of License. ——Defendant in a prosecution for selling liquors without a license cannot defend on the ground that his license was illegally revoked by the board of aldermen, they not being parties to the suit.—*Com. v. Hall*, S. J. C. Mass., Oct. 21, 1887; 13 N. E. Rep. 486.

106. INTOXICATING LIQUORS — Transferring License— Appeal.——Upon an application to transfer a license to sell intoxicating liquors to another place, any one may have himself entered as defendant and may contest the same. Either party may appeal from the decision to the circuit court, whose action is final.—*Lester v. Price*, S. C. App. Va., Sept. Term, 1887; 3 S. E. Rep. 529.

107. IRRIGATION — Waste-water— Evidence.——In an action to restrain the defendants from inferferring with the use of the waste-water of the defendant's ranch, which had been adjudicated in an earlier decision to the plaintiffs, and which was then defined as the water beyond that required to irrigate the ranch and for household purposes, testimony as to how much they required for those purposes and to show how much they had diverted to other purposes was admissible. — *Byrne v. Crafts*, S. C. Cal., Oct. 31, 1887; 15 Pac. Rep. 300.

108. JUDGMENT —Default—Judgment Roll.——On appeal, a judgment by default after notice by publication will be held invalid, if no affidavit of publication is in the judgment roll.—*Weeks v. Garibaldi, etc. Co.*, S. C. Cal., Oct. 25, 1887; 15 Pac. Rep. 302.

109. JUDGMENT — Estoppel — Recoupment. —— On a suit for services, wherein an appeal is taken from the judgment of the justice for plaintiff, a judgment subsequently obtained by the defendant against the plaintiff for negligent performance of the same work, which judgment the plaintiff has paid, is no bar to the farther prosecution of the suit.—*Minnaugh v. Partlin*, S. C. Mich., Oct. 27, 1887; 34 N. W. Rep. 717.

110. JUDICIAL SALE—Equity—Practice—Writ of Assistance.——One who has purchased property at a chancery sale ordered in a suit to wind up the affairs of a society is not entitled to a writ of assistance to put him in possession as against a purchaser at execution sale under a judgment against such society.—*Paine v. Root*, S. C. Ill., May 12, 1887; 13 N. E. Rep. 541.

111. JURISDICTION — Assignment for Creditors—Dividends.——Proceedings to recover a dividend on an assigned estate may be by petition, and the circuit court acquires jurisdiction over the assignee by an order requiring him to appear and answer. Irregularity in acquiring jurisdiction is not waived, when defendant in his answer protests.—*Southern, etc. Bank v. Byles*, S. C. Mich., Oct. 20, 1887; 34 N. W. Rep. 702.

112. LANDLORD ANE TENANT — Co-tenant — Damages. ——A landlord who knowingly lets the upper floors of his building, permitting them to be overloaded so that they fall and injure property on the first floor, is liable in damages to the tenant on the first floor. And so is the tenant on the second floor whose act caused the injury.—*Brunswick, etc. Co. v. Rees*, S. C. Wis., Oct. 11, 1887; 34 N. W. Rep. 732.

113. LANDLORD AND TENANT—Notice to Quit. —— A notice by landlord to his tenant to quit the premises, given while the lease is in force, must specify the time, which must be at or after the termination of the lease. —*Connell v, Chambers*, S. C. Neb., Nov. 2, 1887; 34 N. W. Rep. 636.

114. LEASE — Street Railway—Personal Injuries.—— Where a street railway company leases part of its track to another like company to be operated by the latter, the lesser company will be held responsible for personal injuries suffered upon the leased portion of the track. Terms of the lease stated.—*Braskin v. Somerville, etc. Co.*, S. J. C. Mass., Sept. 24, 1887; 4 N. Eng. Rep. 888.

115. LIBEL — Slander — Justification.—— Where one justifies in an action of slander he must prove that the words spoken are true; it is not sufficient to show that other people said so.—*Funk v. Beverly*, S. C. Ind., Oct. 22, 1887; 13 N. E. Rep. 573.

116. LIEN—Mechanic's—Bond—School Trustees.——A failure by the school trustees to take a bond from a contractor for a school-house to pay for all labor, or material furnished therefor, renders them liable to the material men injured thereby, but a material man, who is on the contractor's bond to complete his contract, and who knew that the other bond was not given, and relied on the contractor for payment, is estopped to proceed against the trustees.—*Owen v. Hill*, S. C. Mich., Oct. 6, 1887; 34 N. W. Rep. 649.

117. LIMITATION OF ACTIONS—Acknowledgment.—— When a debtor writes in the account book of the creditor, "I extend this book account for four months from April 30, 1886," such acknowledgment of the debt takes it out of the operation of the statute of limitations.— *Crane v. Abel*, S. C. Mich., Oct. 13, 1887; 34 N. W. Rep. 658.

118. LIMITATION OF ACTIONS — State — Secretary of State.——The liability of the secretary of State for not paying the fees received by him into the State treasury accrues so soon as he is in default, and in such a case the statute of limitations applies to the State.—*People v. Melone*, S. C. Cal., Oct. 8, 1887; 15 Pac. Rep. 294.

119. LIMITATIONS—Bond—Rebuttal.——A single bond is conclusively presumed to have been paid after ten years from its maturity, nor can the admission of nonpayment by one obligor, nor a judgment by default

against one obligor, render his co-obligor liable.—*Rogers v. Clements*, S. C. N. Car., Oct. 24, 1887; 3 S. E. Rep. 512.

120. LIMITATIONS—Confession of Judgment.——Where several obligors agree to confess judgment in consideration of forbearance to sue, the failure of one of them to do so does not absolve the others nor authorize them to plead the statute of limitations.—*Newton v. Carson*, Ky. Ct. App., Oct. 20, 1887; 5 S. W. Rep. 475.

121. LIMITATION—Infant—Co-tenant.——The minority of one co-tenant prevents the statute of limitations from running against another co-tenant during such infancy.—*Boozer v. Teague*, S. C. S. Car., Oct. 10, 1887; 3 S. E. Rep. 551.

122. LIMITATIONS—Statute of—County Warrant.——When a county warrant is issued payable out of a specific fund the statute of limitations will not run against it until there is money, part of such fund, in the hands of the county treasurer.—*Wetmore v. Wynona County*, S. C. Iowa, Oct. 22, 1887; 34 N. W. Rep. 741.

123. MALICIOUS PROSECUTION.——A defective complaint for a criminal offense and warrant thereon and arrest is sufficient ground for malicious prosecution.—*Potter v. Giertsen*, S. C. Minn., Nov. 7, 1887; 34 N. W. Rep. 746.

124. MALICIOUS SHOOTING—Statute.——An indictment for malicious shooting, under Kentucky statutes, is good if it follows the language of the statute.—*Candiff v. Commonwealth*, Ky. Ct. App., Oct. 25, 1887; 5 S. W. Rep. 486.

125. MANDAMUS — Appeal — School District.——Construction of Iowa statutes relative to school districts, and their territorial relation to each other. Remedies by appeal and *mandamus* considered.—*Bennett v. Board, etc. Earlham*, S. C. Iowa, Oct. 25, 1887; 34 N. W. Rep. 780.

126. MANDAMUS — Intoxicating Liquors—Carrier—Discretion.——*Mandamus* will not lie to compel the performance of an act which is discretionary with the party. A carrier has a right to presume that if the law calls beer an intoxicating liquor, beer offered to him for transportation is intoxicating, and to decline to transport it into Iowa.—*Milwaukee, etc. Co. v. Chicago, etc. Co.*, S. C. Iowa, Oct. 24, 1887; 34 N. W. Rep. 761.

127. MARITIME CONTRACTS — Care of Vessel.—— A watchman of a steamer lying in the port of St. Louis was required to keep her in a place of safety and had her towed around several times. He libeled her for his services, including for material and labor for her repair and preservation. *Held*, that the entire demand was within the jurisdiction of the admiralty court.—*The Maggie P.*, U. S. D. C. (Mo.), 1887; 32 Fed. Rep. 300.

128. MARITIME LIEN—Lex Fori—Lex Loci Contractus.—On contracts made and litigated here, our law applies relative to maratime liens. When liens are enforced against an Italian vessel, the Italian law should be observed relative to the claims of those on board among themselves.—*The Olga*, U. S. D. C. (N. Y.), June 29, 1887; 32 Fed. Rep. 329.

129. MASTER AND SERVANT—Appliances—Risks.——A railroad is not bound to change its mode of using its side tracks, nor to adopt the most approved ways or appliances. If a servant from long-continued employment knows, or should know, the mode of using its side tracks, and continues without complaint in its employment, he assumes such risks.—*Hewitt v. Flint, etc. R. Co.*, S. C. Mich., Oct. 6, 1887; 34 N. W. Rep. 659.

130. MASTER AND SERVANT — Fellow-servant —Negligence.——One who attends a circular saw-mill and the man who runs the engine and inspects all the machinery are fellow-servants, and the former cannot recover of the common employer damages for injuries caused by the negligence of the latter.—*Theleman v. Moeller*, S. C. Iowa, Oct. 24, 1887; 34 N. W. Rep. 765.

131. MASTER AND SERVANT — Fellow-servants.——A track repairer and an engineer of an elevated railway are fellow-servants, and the railway is not responsible for the injuries caused to the former by the negligence of the latter.—*Van Wickle v. Manhattan R. Co.*, U. S. C. C. (N. Y.), Jan. 14, 1887; 32 Fed. Rep. 278.

132. MORTGAGE—Breach of Condition—Entry.——The certificate of entry for breach of condition in a mortgage without a judgment may be sworn to before a notary.—*Murphy v. Murphy*, S. J. C. Mass., Oct. 21, 1887; 13 N. E. Rep. 474.

133. MORTGAGE — Future Advances—Parol Evidence.——Parol evidence may show that a mortgage, purporting to secure a certain note, was to secure future advances not to exceed the amount specified as the amount of the note.—*Moses v. Hatfield*, S. C. S. Car., Oct. 6, 1887; 3 S. E. Rep. 538.

134. MORTGAGE — Foreclosure—Receiver.——Where a mortgage provided that the rents and profits, as well after as before a sale on execution in foreclosure thereof, were pledged for the payment of the debt, and the mortgagee could at the commencement of the suit to foreclose have a receiver appointed, and it did not appear that the mortgagor was insolvent, and it appeared that the land was worth more than the incumbrances on it, a receiver after judgment was denied.—*Paine v. McElroy*, S. C. Iowa, Oct. 22, 1887; 34 N. W. Rep. 615.

135. MUNICIPAL CORPORATIONS — Assessments — Statutes.——Construction of Illinois statutes authorizing cities, towns and villages to make street improvements and to levy assessments upon property owners to defray the expenses thereof.—*Holmes v. Village of Hyde Park*, S. C. Ill., May 12, 1887; 13 N. E. Rep. 540.

136. MUNICIPAL CORPORATIONS — Bay City— Criminal Jurisdiction.——The act of 1887, incorporating Bay City, is constitutional, and the exclusive criminal jurisdiction therein given to its police court refers to subsequent offenses.—*People v. Pond*, S. C. Mich., Oct. 6, 1887; 34 N. W. Rep. 647.

137. MUNICIPAL CORPORATIONS—Evidence.——In an action against a city for injuries sustained by reason of a defect in the highway, evidence that others had been injured by the same defect is admissible.—*Philips v. Town of Willow*, S. C. Wis., Nov. 1, 1887; 34 N. W. Rep. 731.

138. MUNICIPAL CORPORATIONS—Expenditures—Power.——Where it is provided that no appropriation of a city's money shall be made, except for necessary expenses, and but by a concurring vote of six-eighths of all the councilmen, such vote is only required for expenditures outside of the necessary expenses.—*Gardner v. City of Newbern*, S. C. N. Car., Oct. 18, 1887; 3 S. E. Rep. 500.

139. MUNICIPAL CORPORATIONS—Markets.——A statute which authorizes a city to regulate markets does not empower it to forbid the peddling of meats.—*City of Burlington v. Dankwardt*, S. C. Iowa, Oct. 26, 1887; 34 N. W. Rep. 801.

140. MUNICIPAL CORPORATIONS—Sewers—Damages.——Where a municipal corporation so negligently constructs a sewer that the water therein is set back on a party's premises through a sewer connection which he had a right to maintain, such corporation is responsible therefor.—*Defer v. City of Detroit*, S. C. Mich., Oct. 20, 1887; 34 N. W. Rep. 660.

141. MUNICIPAL CORPORATIONS—Streets—Damages.——An abutting proprietor is entitled to recover damages from a city which, by raising the grade of the street, overflows his land.—*Rice v. City of Flint*, S. C. Mich., Oct. 27, 1887; 34 N. W. Rep. 719.

142. MUNICIPAL CORPORATIONS — Taxation — Agricultural Lands.——Construction of Indiana statutes regulating the assessment and taxation of agricultural lands lying within the territorial limits of municipal corporations.—*Dickerson v. Franklin*, S. C. Ind., Oct. 21, 1887; 13 N. E. Rep. 579.

143. NEGLIGENCE — Contributory — Intoxication.——Where in a suit against a railroad, for injuries received in alighting from a train, it is admitted, that the plaintiff had been drinking to some extent, the defendant is entitled to an instruction, that if the drinking contributed at all to the injury, plaintiff cannot recover.—*Straud v. Chicago, etc. R. Co.*, S. C. Mich., Oct. 27, 1887; 34 N. W. Rep. 712.

144. NEGLIGENCE — Railroads—Passenger.——Where a bundle falls from a rack above a seat and injures a passenger, the railroad is not liable, if there was nothing about the bundle to attract particular attention.—*Morris v. New York, etc. R. Co.*, N. Y. Ct. App., Oct. 4, 1887; 13 N. E. Rep. 455.

145. NEGOTIABLE INSTRUMENTS — Conditional Obligation.——If one agrees to indorse the note of another person, upon condition that the creditor will extend the time of payment for twelve months, and indorses the note accordingly, and the note is delivered and a payment made to the creditor who nevertheless refuses to accord the extension, the indorser is not liable.—*Wager v. Huntington*, S. C. Minn., Nov. 7, 1887; 34 N. W. Rep. 745.

146. OFFICERS — District Attorney —Statute.——Construction of Illinois statutes, relating to the fees of district and prosecuting attorneys and their liens for such fees upon judgments for fines.—*People v. Nedrow*, S. C. Ill., Sept. 27, 1887; 13 N. E. Rep. 533.

147. PARTITION — Minor—Jurisdiction.——The superior court has jurisdiction in a suit for partition, when the guardian of the minor is severd.—*Dampier v. McCall*, S. C. Ga., May 1, 1887; 3 S. E. Rep. 563.

148. PARTNERSHIP—Evidence—Misnomer.——The fact of a partnership and the names of the persons who compose it may be proved by oral testimony on behalf of third persons even though written articles exist. Ruling as to misnomer and amendment. — *McEvoy v. Bock*, S. C. Minn., Nov. 7, 1887; 34 N. W. Rep. 740.

149. PATENTS — Dress-forms.——The second claim of letters patent 233,240 to John Hall, is not infringed by a dress-form, where the braces used are not of the same length and extent in the same direction. The second claim in letters patent 236,887, to John Hall is void.—*Morss v. Manchester*, U. S. C. C. (N. Y.), Sept. 14, 1887; 32 Fed. Rep. 282.

150. PATENTS — Fountain Pens.——A fountain pen, differing from that in letters patent 311,554 to Paul E. Wirt, only by having the shaft divided into two parts, is an infringment on that patent.—*Wirt v. Brown*, U. S. C. C. (N. Y.), Sept. 19, 1887; 32 Fed. Rep. 283.

151. PATENTS—Infringement—Accounting.——Only in cases of extreme hardship to the defendant will the court receive an incidental ruling of the master in the course of an accounting, when that ruling can be reviewed on exceptions to the report.—*Welling v. LaBan*, U. S. C. C. (N. Y.), Aug. 1, 1887; 32 Fed. Rep. 293.

152. PATENTS—Infringement—Damages.——On an accounting under a decree of infringement, proof that in ten or eleven suits against infringers all but one had settled by paying $50 for each infringing machine, does not establish a price as for a fixed royalty. Where the complainant has from the first gradually reduced the price of his machine, his losses owing to his reduced price due to the defendant's competition is conjectural. —*Cornely v. Marckwald*, U. S. C. C. (N. Y.), March 6, 1887; 32 Fed. Rep. 292.

153. PATENTS—Joint Infringers. —— Where A and B have a contract to put up several instruments made by C, which infringe complainant's patent, though A became a party to the lease to accommodate B, who could not get it alone, and allowed B to manage the business and take the profits, yet A is equally responsible with B.—*American, etc. Co. v. Albright*, U. S. C. C. (N. J.), Sept. 30, 1887; 32 Fed. Rep. 287.

154. PATENTS — Preliminary Injunctions. —— A preliminary injunction, should be denied for infringement of a patent, when in another district of the same circuit such injunction has been denied against the manufacturers, from whom this defendant obtained the article alleged to infringe, with privilege to renew the motion when the injunction is obtained against the manufacturers, the complainants being the same.—*Hicks v. Beardsley*, U. S. C. C. (N. Y.), Sept. 21, 1887; 32 Fed. Rep. 281.

155. PATENTS — Royalty—Breach.——Where, by contract defendant can manufacture and sell a plow patented by plaintiff on payment of a royalty, the manufacture and sale of a plow with another name but essentially the same plow, without paying the royalty therefor, is a breach of the contract, and the plaintiff may sue for the royalty or for the infringement.—*Starling v. St. Paul P. Works*, U. S. C. C. (Minn.), Oct. 10, 1887; 32 Fed. Rep. 290.

156. PATENTS — School-desk — Anticipation. —— The patent No. 123,797, in favor of William A. Slaymaker for school-desks is held to be anticipated, as to its second claim, by prior patents.—*Pekens v. Haney, etc. Co.*, U. S. C. C. (Mich.), Sept. 19, 1887; 32 Fed. Rep. 395.

157. PATENTS—Spark-arrester. ——Letters patent issued April 11, 1871 to Kearney & Tronson for a locomotive spark-arrester are valid, and a spark-arrester, with grating consisting of upright cast iron bars with connections between them, leaving long spaces or slots between the bars and only interrupted by the connections, is an infringement.—*Kearney v. Lehigh, etc. R. Co.*, U. S. C. C. (N. J.), Sept. 30, 1887; 32 Fed. Rep. 320.

158. PAYMENT—Mistake—Recovery.——Where land is sold to A, subject to a mortgage, which had been assigned to B, A can recover an overpayment of the mortgage made by him though ignorance of the state of the account and relying upon B's statements. —*Byrnes v. Martin*, S. C. Mich., Oct. 27, 1887; 34 N. W. Rep. 688.

159. PLEADING — Demurrer.——Where a demurrer is filed to a petition and is overruled, defendant cannot set up the same matters in his answer.—*Kissinger v. City of Council Bluffs*, S. C. Iowa, Oct. 26, 1887; 34 N. W. Rep. 801.

160. PLEADING — Demurrer — Limitations.——Where the petition shows that the claim is barred by the statute of limitations, a demurrer for that cause may be interposed.—*Merriam v. Miller*, S. C. Neb., Oct. 18, 1887; 34 N. W. Rep. 625.

161. PLEADING—General Denial.——Where a party in his complaint charges, generally, a violation of the terms of a chattel mortgage and the defendant's plea is a general denial, he may show under such plea that the facts proved by the plaintiff do not amount to a breach of the conditions of the mortgage.—*Ellingsen v. Cooke*, S. C. Minn., Nov. 7, 1887; 34 N. W. Rep. 746.

162. PLEADING — Misjoinder. —— If a complaint includes several causes of action in one count, and plaintiff being ordered to divide the count fails to do so, but files a substitute complaint, such substitute may be stricken out upon motion of defendant. —*O'Conner v. Chicago, etc. Co.*, S. C. Iowa, Oct. 25, 1887; 34 N. W. Rep. 795.

163. POOR—Poor Laws — Statute.—— Construction of Iowa laws with reference to the support and maintenance, permanent and temporary, of paupers. Liability of counties for the same.—*Mussel v. Tama County*, S. C. Iowa, Oct. 24, 1887; 34 N. W. Rep. 762.

164. PRACTICE—Judgment by Default—Discretion.—— Construction of Iowa statutes, relative to the time of filing a petition or complaint, judgments by default and judicial discretion as connected therewith.—*Jones v. Merrill*, S. C. Iowa, Oct. 27, 1887; 34 N. W. Rep. 829.

165. PRACTICE — Jury — Allotting Homestead.——Issues of fact arising upon exceptions to findings of fact by commissioners appointed to allot a homestead claimed under execution do not entitle the parties to a jury trial thereof.—*Beavens v. Goodrich*, S. C. N. Car , Oct. 24, 1887; 3 S. E. Rep. 516.

166. PRINCIPAL AND SURETY—Bond—Cost.——An undertaking with sureties conditional for the payment for such sum as may from any cause be adjudged against the plaintiff, makes the sureties liable for the costs of the action.—*Jordan v. La Vine*, S. C. Oreg., Oct. 17, 1887; 15 Pac. Rep. 281.

167. QUIETING TITLE — Assignment — Fraud.——One who has purchased land from the assignee of an insolvent in another State, may maintain a bill to quiet title against a mortgagee claiming under a mortgage executed in fraud of the insovient's creditors.—*Pemberton v. Klein*, N. J. Ct. Chan., Oct. 21, 1887; 10 Atl. Rep. 837.

168. RAILROAD—Highway——A railroad company can in Wisconsin run its track across the public highway but if it lay its track along the street of a town or city destroying the usefulness of such street, an action may be maintained to compel it to restore the street to its former state of usefulness.—*Town of Jamestown v. Chicago, etc. Co.*, S. C. Wis., Nov. 1, 1887; 34 N. W. Rep. 728.

169. RELEASE — Trust — Subrogation.——Where the parties agree that a trust deed securing certain bonds and coupons shall be released the trustee must execute such release although the bonds and coupons paid have not been surrendered. Circumstances stated under which a trustee paying coupons is not entitled to be subrogated to the rights of the holder.—*Pearce v. Bryant, etc. Co.*, S. C. Ill., Sept. 27, 1887; 13 N. E. Rep. 561.

170. REPLEVIN —Description of Property—Co-tenant. —— A writ of replevin by a tenant in common against his co-tenant, who refused to allow him to take his share of the crop, called for so many bushels of wheat. *Held*, that it covered the harvested wheat, which had not been threshed.—*Wattles v. Dubois*, S. C. Mich., Oct. 20, 1887; 34 N. W. Rep. 672.

171. REPLEVIN—Right of Possession—Nonsuit—Judgment.——If, in replevin, a plaintiff's evidence shows not only his right of property but that defendant is lawfully in possession as his bailee, a nonsuit may properly be ordered. In an alternative judgment in replevin it is the duty of the court to find and declare the value of the property.—*Gaynor v. Blewitt*, S. C. Wis., Nov. 1, 1887; 34 N. W. Rep. 725.

172. REPLEVIN—Riparian Rights.——When one finds a log in a stream and puts it in his boom and loses it again, if he recovers it his right is good against all others, except the original owner.—*Deadrick v. Oulds*, S. C. Tenn., Sept. 27, 1887; 5 S. W. Rep. 487.

173. SALE — Conditional — Agreement. —— Where a dealer ships tobacco on order after the buyer had been notified that his terms were notes for three, four and five months, and the buyer fails to execute the notes, which were sent on in blank at the same time, there is no sale, but a mere agreement to sell.—*Millhiser v. Erdman*, S. C. N. Car., Oct. 24, 1887; 3 S. E. Rep. 521.

174. SALE—Delivery.——Where a sale of land has been made and payment in part is to be in personal property, the possession of the same for several months is retained by the vendee of the land, the contract is valid and binding between the parties, and upon all parties have notice thereof.—*First Nat. Bank, etc. v. Reno*, S. C. Iowa, Oct. 25, 1887; 34 N. W. Rep. 796.

175. SALVAGE —Towing Burning Lighter Away.—— Where a lighter catches fire and the men are compelled by the heat to leave, when she drifts under the quarter of the steamer, a tug, which tows the lighter away is entitled to salvage.—*The Straits of Gibralter*, U. S. D. C. (N. J.), Sept. 10, 1887; 32 Fed. Rep. 297.

176. SHERIFF — Negligence — Levy—Damages.——An officer in executing a writ of attachment must exercise the diligence, which men ordinarily would exercise in their own business to protect their rights and interests, and he is apprised that diligence is required when a writ of attachment is put into his hands at 1 A. M., and he is responsible if he does not exercise due diligence, and when by lack of his diligence the creditor is prevented from collecting his judgment the damages are *prima facie* the amount of the judgment.—*People v. Colerick*, S. C. Mich., Oct. 27, 1887; 34 N. W. Rep. 683.

177. SURFACE-WATER — Obstructions — Liability. —— Where one party obstructs the natural flow of surface-water so as to dam it up and cause it to overflow the land of his neighbor, he is liable therefor.—*Stewart v. Schneider*, S. C. Neb., Nov. 2, 1887; 34 N. W. Rep. 640.

178. TAXATION—Assessments—Parsonage.——A parsonage is not exempt from assessments for street improvements in front of it.—*St. Mark's Church v. Brunswick*, S. C. Ga., May 3, 1887; 3 S. E. Rep. 561.

179. TAXATION—Mortgage—Corporation.——The Pennsylvania statutes do not impose taxes on mortgages held by corporations. Acts of 1879, 1881 and 1885.—*Appeal of Loughlin*, S. C. Penn., April 4, 1887; 10 Atl. Rep. 832.

180. TAXATION—Overvaluation—Remedy—Statutes.—— Construction of Illinois statute relative to taxation, assessment, overvaluation and the remedies therefor.—*People v. Lots in the City of Ashley*, S. C. Ill., Sept. 28, 1887; 13 N. E. Rep. 556.

181. TAXATION — Personalty — Non-resident —County. ——The personal property of a non-resident, situated in an unorganized county, is taxable in the county to which that portion of the unorganized county was attached.—*Llano, etc. Co. v. Faught*, S. C. Texas, Oct. 21, 1887; 5 S. W. Rep. 494.

182. TAXATION—Sale—Redemption.——Courts do not favor a forfeiture and require strict proof. A purchaser at a tax-sale cannot contest the right of the party, to whom the tax was assessed, to redeem from such sale. —*Townshend v. Shaffer*, S. C. App. W. Va., Sept. 23, 1887; 3 S. E. Rep. 586.

183. TAXATION—Tax-deed—Limitations.——Construction of Iowa relative to taxation, tax-sales and tax-deeds. Irregularities that will render a tax-sale not void but voidable. Operation in such case of the statute of limitations.—*Griffin v. Bruce*, S. C. Iowa, Oct. 25, 1887; 34 N. W. Rep. 773.

184. TAXATION — Tax-deed — Redemption. —— Construction of Iowa statutes relative to taxation, tax-sales, tax-deeds, proceedings to set them aside, redemption of land sold for taxes, and notice of expiration of time for such redemption.—*Whiteis v. Farsons*, S. C. Iowa, Oct. 25, 1887; 34 N. W. Rep. 782.

185. TAXATION — Tax-sale—Mistake—Idem Sonans.—— Construction of Iowa statutes relative to taxation, tax-sales and proceedings connected therewith. A mistake in the name of a party, if the names are *idem sonans*, will not vitiate a tax-deed.—*Nycum v. Raymond*. S. C. Iowa, Oct. 27, 1887; 34 N. W. Rep. 819.

186. TAXATION—Tax-sale—Tax-deed—Statutes—Notice. ——In Illinois, a notice of a tax-sale must be severed upon the owner or party in possession, and a notice served upon the agent of the owner is not sufficient. Further rulings on Illinois practice, and statutes relative to taxation, tax-sales, tax-deeds and proceedings to set aside the same.—*Gage v. Waterman*, S. C. Ill., May 12, 1887; 13 N. E. Rep. 543.

187. TRUSTS — Deposits — Gifts.——A fund deposited, with directions in case of depositor's death to divide among his children, to which by subsequent directions to the depository is added, that the depository may secure himself thereform against loss from indorsing for the depositor, is subject to such claims. It is not a gift *inter vivos* to the children, and is subject to the payment of the depositor's debts.—*Sterling v. Wilkinson*, S. C. App. Va., Sept. Term, 1887; 3 S. E. Rep. 533.

189. USURY.——Upon a foreclosure of a mortgage for money loaned the plaintiff can only recover the amount actually received by the defendant. Anything beyond that amount is usury.—*Penning v. Scholer*, N. J. Ct. Chan., Oct. 18, 1887; 10 Atl. Rep. 833.

190. USURY—Note—Collection Fees.——A promissory note, providing for payment of attorney's fees, if placed in the hands of an attorney for collection is not usurious nor against public policy.—*Barton v. Farmers, etc. Bank*, S. C. Ill., Sept. 28, 1887; 13 N. E. Rep. 503.

191. VENDOR AND VENDEE — Equity — Fraud—Rescision.—— Where a bill to rescind an exchange of lands charges raudulent misrepresentations, by a person stated by defendant to be trustworthy and it appears that defendant's land was greatly inferior in value to that of the plaintiff, the latter will be entitled to a decree rescinding the contract on the ground of fraud and inadequacy of consideration.—*Witherwax v. Riddle*, S. C. Ill., May 12, 1887; 13 N. E. Rep. 545.

192. VENDOR AND VENDEE—Recovery of Possession—Improvements.——Where a vendor receives a note, which upon payment is to be in satisfaction of the price of the land upon which the vendee then enters and makes improvements, and subsequently the vendor collects the note by a suit and obtains possession of the

land, the vendee is entitled to recover for his improvements less the rent, and the proceeds of the note less the expense of collection.—*Sheard v. Welburn*, S. C. Mich., Oct. 27, 1887; 34 N. W. Rep. 716.

193. WATER AND WATER-COURSES—Canal.——A lease of the surplus water of a canal conveys no title to the water itself. If the canal is abandoned the lease ceases to have any effects.—*Hoagland v. New York, etc. Co.*, S. C. Ind., Oct. 18, 1887; 13 N. E. Rep. 572.

194. WAYS—Easement — Private Way.——One, over whose land others have an easement of right of private way, may erect a gate at each end of such way.—*Whaley v. Jarrett*, S. C. Wis., Nov. 1, 1887; 34 N. W. Rep. 727.

195. WILL—Annuity. —— Where a will provides that enough money shall be invested to produce annually a fixed sum, and after a time the money so invested fails to prodnce annually that sum, more money must be provided so as to secure the fixed annuity.—*Merritt v. Merritt*, N. J. Ct. Chan., Oct. 18, 1887; 10 Atl. Rep. 835.

196. WILL — Children—Grandchildren.——A bequest by a testator to the children of his sister, when his sister had been dead forty-two years, and the last of her children seven years, before the will was made, which was well known to the testator, must be considered as made to the grandchildren who were then living.—*In re Schedel*, S. C. Cal., Oct. 24, 1887; 15 Pac. Rep. 297.

197. WILL—Construction—Demonstative Legacy.—— The terms of a will stated in which it appears that legacies given therein are to be regarded as demonstrative not absolute, the fund out of which they were to be paid having been diminished by the testator in his lifetime.—*Bradford v. Brinley*, S. J. C. Mass., Sept. 22, 1887; 4 N. Eng. Rep. 869.

198. WILL—Devise—Dower.——Unless by his will the testator expressly, or by fair implication, declares a devise or bequest to his wife, to be in lieu of dower and distributive share, she will not be put to her election, but may take dower and devise and legacy.—*In re Estate of Blaney*, S. C. Iowa, Oct. 25, 1887; 34 N. W. Rep. 769.

199. WILL—Devise—Life Estate.——Where a testator devises land to his son to hold for the benefit of himself, his wife and children, and not to be liable for his debts, his interests in the rents and profits are nevertheless liable for his debts.—*Rudd v. Van Der Hagen*, Ky. Ct. App., Oct. 15, 1887; 5 S. W. Rep. 516.

200. WILL —Devise—Remainder—Contingent Remainder.——Where, by will, a testator gives property to three persons, providing if any one died childless her share should go to the other two. One died childless and her share was divided between her two sisters. Another died leaving a child who inherited her mother's property. The third died childless leaving by will her property to other persons. *Held*, that her will took effect as against her sister's child.—*Gorham v. Betts*, Ky. Ct. App., Oct. 15, 1887; 5 S. W. Rep. 465.

QUERIES AND ANSWERS.*

[*Correspondents are requested to draw up their answers in the form in which we print them, and not in the form of letters to the editor. They are also admonished to make their answers as brief as may be.—Ed.*]

QUERY NO. 30.

1. A and B are husband and wife. A and B transfer their property to C by warranty deed without consideration. C was to convey property at their demand. A has committed adultery. B refuses to live with A but does not want to get a divorce. Can B petition the court and have the property decreed to her for her sole and separate use and so she can convey it by her own deed? The property was purchased by A with money which B had at their marriage in the name of A and with no understanding whether it should be for B's sole and separate use or not. 2. In above case, can A and B contract between themselves so that B may convey said estate by her own deed? This is a Missouri case. Cite authorities. M. & M.

QUERIES ANSWERED.

QUERY NO. 28. [*25 Cent. L. J. 479.*]

Facts: 1. B sued out attachment in an action for debt against A. 2. The attachment was levied on personal property—in value to equal the debt. 3. A replevied the property, giving as his bondsmen C, D, E and F, in double the value of the property levied on. 4. The action proceeded to judgment in usual form: (1) Judgment for debt against A; (2) judgment for the value of the property against C, D, E and F, to be satisfied as to them if A returns the property levied on by attachment to the sheriff. 5. A fails to return the property or any of it, so that all liability is fixed on C, D, E and F to the value of the attached property, and on A for the whole debt. 6. B causes execution to issue against all the judgment debtors. Levies are made on A's property and sales made, but does not realize enough to satisfy judgment, or equal the amount of the value of the attached property. 7. *Alias* execution issues, whereupon B receives of D and E money equal to their *pro rata* liability on the debt unpaid and executes to each of them receipts in acknowledgment of payment from them and discharges them from further liability on the judgment. Query: Does the discharge of D and E by B under all the facts operate as a discharge of C and F, their co-securities? Texas statutes do not affect the question. Cite authorities. W. H. & W.

Answer. C and F are not discharged. Baylies' Sur. & Guar. 235; Brandt on Guar. & Sur. § 383; DeColyar on Guar. and P. & S. 406. C.

RECENT PUBLICATIONS.

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This is a work which will no doubt prove useful to the profession in the State of New York. It professes only to treat of the practice in special proceedings in courts of record in that State, and can only apply by analogy to like proceedings under similar statutes in other States.

That sort of usefulness we have always thought was very limited and precarious, and hardly to be regarded as an element of the value in a legal work. If a book founded upon and construing the statutes of a particular State on a special subject, proves satisfactory to the profession in that State, it has fulfilled its mission. This we believe the volume before us does, and we accordingly commend it to the consideration of those who may have to deal with special proceedings in courts of record under the statutes of New York.